

# Exhibit 1

# Marywood University Policy & Procedure Information

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## Authority of the Board of Trustees

### Policy Statement

The Board of Trustees of Marywood University, a governing board, exists as a body empowered by the sponsor, the Sisters, Servants of the Immaculate Heart of Mary, Scranton, PA, and by the state, the Commonwealth of Pennsylvania. The Board, recognizing itself as a body acting in trust, acknowledges that its corporate authority is matched by its corporate accountability. Its philosophy of leadership is based on principles of strategic direction and major policy making.

1. The Board is the guardian of institutional values. Its philosophy of leadership based on strategic direction and major policy making enables an outcome driven system that enforces mission as the central organizational focus.
2. The Board defines its leadership position as one that is more of governance than of management.
3. Delegation of authority to the President of the University as Chief Executive Officer coupled with pronouncements of explicit Board policies frees the Board to direct its attention to matters of enduring importance, to use board time efficiently, and to keep focused on the vision for the future.
4. Explicit major policies pronounced by the Board address areas of responsibility defined in the Bylaws.

## Related Policies

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## Related Committees

## History

1/23/99 - Adopted by the Board of Trustees and placed in Board of Trustees Manual

Secretary of the University & General Counsel | 108 [Immaculata Hall](#)

570-340-6018 | F: 570-340-6014 | [paterson@marywood.edu](mailto:paterson@marywood.edu)

Please note, the materials presented on this website are provided for informational purposes only and may not be construed as legal advice from the Office of the Secretary of the University and General Counsel.

# Exhibit 2

## Marywood University Policy & Procedure Information

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### Delegation to the President Policy Statement

The intention of the Board of Trustees of Marywood University is to concentrate its efforts on governance through strategic direction and major policy making. It therefore affirms its expectation that the President as chief executive officer be responsible for the efficient operation of the institution while maintaining the integrity of Board policy.

The Board of Trustees delegates to that person now holding or subsequently appointed to the position of President of the University the authority to exercise all of the powers and duties required for the effective management of the University. Although accountability to the Board rests with the President alone, that person may designate other University employees to exercise specific powers and duties delegated to the President.

It is expected that the President will use good faith and judgment in bringing to the Board's attention any new areas of major institutional policy or strategic direction that may arise.

1. Delegation of authority extends to interpreting and implementing Board policy, and to establishing subsidiary policies and regulations for the proper governance of the University. Exclusions from delegation of authority include matters of major policy or strategic direction, those which are vested in or imposed upon the Board itself by law, and those powers and duties stated in Board policies that the Board shall expressly reserve for itself.
2. The President may not perform, allow, or cause to be performed any act which is unlawful or insufficient to meet commonly accepted business or professional ethics or a "prudent person" test, in violation of enactments of regulatory bodies, requirements of funding sources, or explicit Board restraints on executive authority.
3. The Board may, by extending its policies, "undelegate" areas of the President's authority, but it will respect the President's choices so long as the delegation continues. This does not prevent the Board from obtaining information about activities in delegated areas.
4. Only the Board by its majority vote has authority over the President of the University. Information may be requested by an individual trustee or committee, but if such request, in the President's judgment, requires a material amount of staff time, it may be refused.
5. Should it be deemed necessary to violate a Board policy, the President will inform the Board. Informing is simply to guarantee no violation is intentional, not to request approval after the fact. Board response, either approving or disapproving, does not exempt the President from subsequent Board judgment of the action.

### Related Policies

### Related Committees

### History

01/23/99 - Adopted by the Board of Trustees and placed in Board of Trustees Manual

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570-340-6018 | F: 570-340-6014 | [paterson@marywood.edu](mailto:paterson@marywood.edu)

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# Exhibit 3

## Marywood University Policy & Procedure Information

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### Non-reappointment of Faculty Member Policy Statement

Non-reappointment of a faculty member is the right of the President of Marywood University, so long as there is no violation of tenure policies, contractual agreements, or other policies stated in the Faculty Handbook. Notification of non-reappointment is made based on length of service as follows:

*not later than March 1 of the first academic year of service;*

*not later than December 15 of the second academic year of service; or*

*at least twelve months before the expiration of an appointment after two or more years at Marywood University.*

### Related Policies

- [Contractual Agreements with Faculty Members](#)
- [Tenure](#)

### Related Committees

### History

07/01/89 - Reaffirmed with publication of Faculty Manual

07/01/03 - Editorial changes made to reflect academic restructuring

Secretary of the University & General Counsel | 108 [Immaculata Hall](#)

[570-340-6018](#) | F: 570-340-6014 | [paterson@marywood.edu](mailto:paterson@marywood.edu)

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[STUDENTS](#) [STAFF](#)

# Exhibit 4

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FREDERICK F. FAGAL, JR.	:	
	:	
<i>Plaintiff,</i>	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 3:14-cv-02404-ARC
MARYWOOD UNIVERSITY,	:	
	:	ELECTRONICALLY FILED
<i>Defendant.</i>	:	
	:	

**AMENDED COMPLAINT**

Frederick F. Fagal, Jr., Plaintiff, hereby brings this Amended Complaint against Marywood University, Defendant, and avers as follows:

**PARTIES**

1. Marywood University (hereinafter “Marywood” or the “University”) is a university and a Pennsylvania domestic non-profit corporation located in Scranton, Pennsylvania.

2. Frederick F. Fagal, Jr. (hereinafter “Professor Fagal”) is a natural person who has resided in New York State for more than 20 years and intends to remain there indefinitely. Professor Fagal is thus a citizen of New York State.

3. Professor Fagal earned a bachelor’s degree in 1968 from Union College in Schenectady, New York, a Masters in Economics from Cornell



University in 1971, and a Ph.D. in Social Studies Education from Syracuse University in 1981.

4. Professor Fagal became a member of Marywood's faculty in the fall semester of 1987.

5. Professor Fagal attained tenure at Marywood in September 1994.

6. Marywood terminated Professor Fagal's tenure and employment on April 3, 2012.

### **JURISDICTION AND VENUE**

7. This Court has original jurisdiction over this action under 28 U.S.C. § 1332 as the matter in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs, and is between citizens of different states.

8. This Court has general personal jurisdiction over Marywood as the University has continuous and systematic contacts within the Commonwealth of Pennsylvania.

9. Venue is proper under 28 U.S.C. § 1391 as a substantial portion of the events giving rise to Professor Fagal's claim occurred within the Middle District of Pennsylvania.

## **FACTUAL BACKGROUND**

10. In 1992, Professor Fagal entered into an Agreement and Appointment for Full-Time Faculty with Marywood. The agreement states that “[t]he policies and practices listed in the Faculty Manual are agreed upon by the parties hereto.” A partially redacted copy of that agreement is attached hereto as Exhibit A.

11. The “Faculty Manual” was also known as or later became known as the “Faculty Handbook.”

12. Professor Fagal and Marywood entered into written agreements for him to serve on the University’s full-time faculty for each year between 1992 and 2012.

13. Professor Fagal became a tenured faculty member of Marywood in September 1994.

14. On July 1, 2010, Marywood issued an edition of its Faculty Handbook. The first four pages of the Faculty Handbook are attached hereto as Exhibit B. The third page states, in part: “This handbook is effective with the 2010-2011 faculty letters of agreement.” The fourth page states, in part: “Policy changes require the approval of the President of the University and, when required, the Board of Trustees. Changes are disseminated by the Secretary of the University. They are

effective with formal approval and placement in the Marywood University Policies and Procedures Manual.”

15. In May 2011, Professor Fagal entered into an agreement with Marywood stating that he would serve as a tenured Associate Professor from August 22, 2011 to May 18, 2012 and earn a specific salary. A partially redacted copy of that agreement is attached hereto as Exhibit C.

16. At the time that Professor Fagal and Marywood entered into the May 2011 agreement, Marywood’s “Contractual Agreements with Faculty Members” policy stated that this type of agreement is a “binding contract covering a specific period of time and as a vehicle to renew, adjust and/or alter the terms of the original contract regarding appointment, rank, tenure, salary, benefits, etc.” The same policy stated: “Tenure is a term designating guaranteed continuous appointment to full-time faculty members until retirement.” A copy of that policy is attached hereto as Exhibit D.

17. If Professor Fagal was ever an at-will employee of Marywood, he was no longer so upon attaining tenure. His tenure and employment could only be terminated in conformance with Marywood’s Policies and Procedures Manual.

**Marywood Tears Down Professor Fagal's Posters Inviting Students to a  
Lecture on Free Speech**

18. In November 2011, Professor Fagal invited and paid for a speaker from the Philadelphia-based Foundation for Individual Rights in Education (hereinafter "FIRE") to give a presentation to his "Introduction to Social Science" course at the end of the month. The topic of the presentation was "Know Your Rights: Free Speech and Thought Reform on Campus," which was related to Professor Fagal's teaching of the United States Constitution.

19. Professor Fagal received approval from Marywood to hang posters (which he arranged to have printed and he paid for) announcing the FIRE presentation and inviting any and all Marywood students to attend at the University's Comerford Auditorium.

20. On or around November 28-29, 2011, Marywood personnel tore down almost all of the FIRE posters. A Marywood official confirmed that the University was responsible. Marywood did not provide any notice to Professor Fagal before or after the FIRE posters were torn down.

21. When Professor Fagal complained about the poster tear-downs shortly thereafter, Marywood's Vice President for Academic Affairs could not identify any written policy statements by the University that warranted these actions.

22. Professor Fagal attempted to secure an apology by Marywood as well as reimbursement for the posters that were torn down, but Marywood refused these requests.

23. On January 13, 2012, Professor Fagal sent an email from his personal email address to Marywood faculty members about the removal of his posters. In that email, Professor Fagal criticized the Marywood administration for tearing down his posters and for its weak commitment to free speech generally.

24. The January 13th email also contained hyperlinks to two related videos criticizing Sister Anne Munley, President of Marywood, and several other administrators for ordering or participating in the poster tear-downs and again for a weak commitment to free speech. The videos were posted to YouTube.

#### **Marywood Suspends Professor Fagal**

25. At approximately 8:45 AM on January 23, 2012, a Marywood dean visited Professor Fagal's office as he was preparing for his 9:00 AM class and stated that President Munley was summoning him to a meeting at the same time.

26. At the 9:00 AM meeting, President Munley asked Professor Fagal whether he posted the two-part video on YouTube. Professor Fagal acknowledged posting the video. Professor Fagal was asked to explain his actions, but when he attempted to raise the issue of the poster tear-down, that topic was not allowed.

Permitted no context to “explain” his actions, Professor Fagal could “explain” nothing. President Munley then told Professor Fagal that his employment was suspended effective immediately and that he should return his keys and University identification card to Marywood’s Assistant Vice President for Human Resources.

27. Several hours later, Marywood’s Assistant Vice President for Human Resources sent Professor Fagal an email confirming that he had been suspended and directing him to clean out his University office.

28. At the time of Professor Fagal’s suspension, Marywood’s “Progressive Discipline” policy (attached hereto as Exhibit E) stated:

Marywood University endorses a progressive discipline policy designed to promote resolution in a fair and orderly manner. This policy applies to faculty members with tenure or whose terms of appointment have not yet expired.

The policy is intended to provide an effective and flexible means of identifying problem areas, resolving complaints, and preventing repetitive incidents by prompt intervention and assistance. It is designed to accomplish these ends by a series of gradual steps involving strategies such as personal conferences, oral and written warnings, and opportunities for monitored assistance where applicable.

....

***Suspension.*** The faculty member may be suspended by the Vice President for Academic Affairs at any time during the proceedings involving him or her. Suspension

is justified if immediate harm to the faculty member or others is threatened by the person's continuance in the faculty position.

29. Marywood's suspension of Professor Fagal was a breach of contract in several ways. First, there was nothing "progressive" about the discipline meted out to Professor Fagal. There was no oral or written warning—nor was any opportunity for monitored assistance provided.

30. Second, President Munley—not the Vice President for Academic Affairs—suspended Professor Fagal.

31. Third, at the time of the suspension, there was no immediate harm to Professor Fagal or to others threatened by Professor Fagal's continuance in his faculty position—and no Marywood official or representative has ever stated otherwise to him.

### **Marywood Moves to Terminate Professor Fagal**

32. On January 24, 2012, approximately 28 hours after President Munley suspended Professor Fagal, she sent him a letter stating that she was "recommending that [his] tenure and employment with Marywood be terminated immediately."

33. In the January 24th letter, President Munley provided a "Statement of Charges," which she was "prepared to send . . . to a duly appointed faculty

committee for review along with the emails and videos you forwarded to members of our community.”

34. The end of the second “charge” contained in the January 24th letter is missing, and therefore it was initially impossible for Professor Fagal to know the full extent of the “charges” against him.

35. After Professor Fagal’s attorney wrote to President Munley requesting an amended “Statement of Charges” —among other breaches that he identified—President Munley sent a second letter to Professor Fagal on February 8, 2012.

36. In the February 8th letter, President Munley again stated that she was recommending that Professor Fagal’s “tenure and employment with Marywood be terminated immediately” and offered a “Statement of Charges.”

37. In the second “charge” against Professor Fagal, President Munley accused him of violating Marywood’s Civil Rights Policy.

38. Near the end of the February 8th letter, President Munley wrote:

As a result of this recommendation, I am prepared to send this statement of charges to a duly appointed faculty committee for review along with the emails and videos you forwarded to members of our community. In order to do so and out of respect for your privacy, I would ask that you please sign and return to me the attached authorization granting the University permission to do so. That faculty committee may agree or disagree with my



recommendation. Once I receive the review committee's determination, I will finalize my decision. Should you choose to forego that faculty review, I will finalize my recommendation based upon my own findings and conclusions.

39. A document titled "Release of Personal Information" enclosed with President Munley's February 8th letter states, in part:

\_\_\_\_ I DO NOT grant permission for Marywood University to release Sister Anne Munley's Recommendation for Termination and Statement of Charges dated 1/24/12 to a faculty review committee comprised of tenured faculty. I understand that by refusing such permission that there will be no faculty committee review of Sister Anne Munley's decision to terminate my tenure and employment with the University prior to it being finalized.

OR

\_\_\_\_ I DO grant permission for Marywood University to release Sister Anne Munley's Recommendation for Termination and Statement of Charges dated 1/24/12 to a review committee comprised of tenured faculty.

40. President Munley's recommendation to terminate Professor Fagal's employment and tenure violated the "Progressive Discipline" policy in effect at the time. That policy contained one sentence addressing dismissal: "If remedial actions(s) taken during the suspension does not sufficiently resolve the issues that lead to the suspension, the university may move towards dismissal of the faculty member."

41. Marywood took no “remedial actions” to “resolve the issues” that led to Professor Fagal’s suspension. Professor Fagal’s suspension began on the morning of January 23, 2012, and the first letter recommending his termination arrived in his inbox at 1:11 PM on the next day. Nor did Marywood attempt any “remedial actions” before sending the February 8th letter.

42. President Munley’s February 8th letter also violated Marywood’s “Civil Rights Complaint Procedures” policy in effect at the time. That policy required an individual allegedly aggrieved by a civil rights violation to file a complaint, among other procedures. Those procedures “must be followed any time a member of the Marywood University community believes s/he has been the victim of . . . discrimination, harassment, or assault by any member of the University community . . . .” A copy of that policy is attached hereto as Exhibit F.

43. No Marywood employee filed a civil rights complaint against Professor Fagal after his January 13, 2012 email, and thus President Munley’s attempt to “charge” him with violating the University’s Civil Rights Policy was a breach of Marywood policy as well as a breach of contract.

#### **Marywood Refuses to Allow Professor Fagal to Appeal His Suspension**

44. In President Munley’s January 24th and February 8th letters, she asked Professor Fagal to authorize her to send the “statement of charges” against

him to a “duly appointed faculty committee for review” of her decision to terminate his employment and tenure.

45. Nowhere in the letters or the authorizations did President Munley offer to convene a faculty committee to review her suspension of Professor Fagal.

46. President Munley offered Professor Fagal two choices: a faculty review of her recommendation to terminate him or the “finalization” of her own decision to terminate him.

47. The “Progressive Discipline” policy in effect at the time of President Munley’s letters stated that faculty members “have the right to convene an ad hoc committee in order to appeal either a decision to suspend the faculty member or a decision to dismiss the faculty member.”

48. On February 2, 2012, Professor Fagal, through his attorney, elected in writing to convene two ad hoc faculty committees: one for President Munley’s decision to suspend him and the other for her recommendation to terminate him.

49. On February 9, 2012, Marywood, through its attorney, rejected Professor Fagal’s request to convene an ad hoc committee to review his suspension. The letter stated, in part, that Professor Fagal had breached his contract with Marywood and thus the University “had no further contractual obligations to him.”

50. Marywood's position—if accepted—would mean that any time that the University deemed—in its sole discretion—that a member of its community breached a contract with the University, then the University could disregard any of its own disciplinary policies. Such a position is absurd.

**Professor Fagal Files a Formal Grievance Against President Munley; she Retaliates by Terminating Him.**

51. On February 22, 2012, Professor Fagal filed a formal grievance against President Munley under Marywood's "Faculty Grievances and Appeals" policy. A copy of that grievance is attached hereto as Exhibit G.

52. In the grievance, Professor Fagal alleged that President Munley violated Marywood policy by improperly suspending him, by improperly moving to terminate his employment and tenure, and by not accepting his request to convene an ad hoc committee to appeal the suspension.

53. On March 26, 2012, the Chair of Marywood's Faculty Grievance Committee sent a letter to Dr. Fagal summarizing his grievances and concluding: "I now write to inform you that in reviewing each of these grievances, we have found no evidence of improper action on President Munley's part which would constitute a legitimate grievance."

54. On April 3, 2012, President Munley sent a letter to Professor Fagal stating in part: “Since the grievance process is now complete, I have decided to finalize my recommendation. As a result, your employment with Marywood and your tenure are terminated effective today, April 3, 2012.” A copy of that letter is attached hereto as Exhibit H.

55. One paragraph after declaring Professor Fagal’s relationship with Marywood at an end, however, President Munley offered to convene the two ad hoc faculty committees that he had been requesting for months. President Munley claimed: “I am doing this despite the fact that on two separate occasions you refused my offer and did not choose to convene an ad hoc committee to review my decision to suspend you and my recommendation to terminate your employment and tenure before I finalized my decision.” President Munley’s claim that Professor Fagal did not convene an ad hoc committee to review the suspension decision is verifiably false.

56. Further, President Munley’s offer to convene two ad hoc committees was effectively a dead letter because she had—in the very same writing—declared the termination of his employment and tenure to be final.

57. The “Progressive Discipline” policy in effect at the time conveyed that before a faculty member may be dismissed, an ad hoc faculty committee must

recommend a formal action toward dismissal. Therefore, President Munley's termination of Professor Fagal's employment on April 3, 2012 was premature and in contravention of Marywood policy.

58. President Munley's premature termination also violated the "Faculty Grievances and Appeals" policy (attached hereto as Exhibit G), which stated that "[g]rievants will not be adversely affected for exercising their right to file a grievance, regardless of outcome" and that "[g]rievants will not be subject to adverse consequences for either initiating a grievance or in presenting evidence on behalf of a grievant."

59. On July 2, 2012, a group of Marywood faculty members calling themselves the "Faculty Senate Ad Hoc Hearing Committee" ("FSAHHC") issued a document titled "Review of Sister Anne Munley's Decision to Terminate the Employment and Tenure of Dr. Frederick Fagal."

60. The FSAHHC did not concur with all of the charges lodged against Professor Fagal. Nonetheless, the FSAHHC concurred with President Munley's decision to revoke the tenure and terminate the employment of Professor Fagal.

61. Contrary to Marywood's "Progressive Discipline" policy and President Munley's April 3rd letter, neither the FSAHHC nor any other ad hoc faculty committee reviewed Professor Fagal's suspension.

62. At the time of the FSAHHC's decision, Marywood's "Progressive Discipline" policy stated, in part:

Faculty members have the right to convene an ad hoc committee in order to appeal either a decision to suspend the faculty member or a decision to dismiss the faculty member . . . . Should a faculty member request that such a committee be convened twice (i.e., once for suspension and once for dismissal), the membership of the committee may be similar or different, a determination which is made by the President of the University in consultation with the faculty member and the Vice President for Academic Affairs.

63. Accordingly, the failure of any Marywood ad hoc faculty committee to review Professor Fagal's suspension was a breach of Marywood's "Progressive Discipline" policy.

64. Had an ad hoc faculty committee actually reviewed Professor Fagal's suspension, it would have likely found that suspension improper given that he posed no harm to himself or to others. Such a finding would have logically caused the ad hoc faculty committee reviewing Professor Fagal's termination to rule in his favor given that the propriety of a dismissal depends on the propriety of a suspension under the "Progressive Discipline" policy.

65. On July 13, 2012, President Munley sent Professor Fagal a letter stating, in part: "My decision to terminate your employment with Marywood University and your tenure effective April 3, 2012 stands."

66. Professor Fagal received his agreed-upon salary through August 2012, at which point Marywood ceased paying him.

### **Postscript**

67. After terminating Professor Fagal, the University amended its disciplinary policies so as to allow it to handle future “Professor Fagals” in the same way—but without breaching such policies. Accordingly, Marywood is well-aware that it breached its own policies as alleged above.

### **COUNT I** **(Breach of Contract)**

68. Professor Fagal adopts by reference each and every allegation stated above.

69. Marywood’s Faculty Manual, Faculty Handbook, Policies and Procedures Manual, and the letter agreements referenced above constitute binding contracts between Professor Fagal and the University.

70. Marywood repeatedly breached duties owed to Professor Fagal under the above-referenced contracts.

71. Marywood’s breaches of its duties to Professor Fagal caused him to suffer damages, including but not limited to the loss of continued salary and other benefits owed to tenured faculty members.



## **RELIEF REQUESTED**

**WHEREFORE**, Professor Fagal demands judgment in his favor and against Marywood for:

- A.** Back pay in an amount to be proved at trial;
- B.** Reinstatement of Professor Fagal's employment and tenure with Marywood;
- C.** Front pay up to the reinstatement of Professor Fagal's employment with Marywood or—if reinstatement is not awarded—through the end of Marywood's spring semester in 2018 (when Professor Fagal would be 72 years old);
- D.** Stock market foregone gains on 403(b) salary deductions not invested in Professor Fagal's Fidelity retirement account;
- E.** Pre-judgment interest;
- F.** Post-judgment interest;
- G.** Reasonable attorneys' fees and court costs; and
- H.** Such other and further relief to which Professor Fagal may be entitled at law or equity.

Respectfully,

By: s/ Jonathan Z. Cohen  
Jonathan Z. Cohen (PA205941)  
175 Strafford Avenue, Suite 1  
Wayne, Pennsylvania 19087-3340  
(484) 253-1175  
(215) 839-8951 (fax)  
jzc@jzc-law.com

*Attorney for Plaintiff Frederick F. Fagal, Jr.*

Date: January 15, 2015

**MARYWOOD COLLEGE**  
Scranton, Pennsylvania  
**AGREEMENT and APPOINTMENT**  
for  
**FULL-TIME FACULTY**

TERMS OF THIS AGREEMENT are offered on the 22nd day of August, A.D. 1982  
to Dr. Frederick E. Pagani, Jr.

17 East Lake Street, Scranton, NY 13350  
party of the first part, by Marywood College, a non-profit corporation, created and existing by and under the laws of the Commonwealth of Pennsylvania, party of the second part.

The parties witness that, in consideration of the mutual promises and agreements herein contained, the following terms are in effect from September 1, 1982 to May 31, 1983:

(1) Type of Appointment Full-Time (9 Months)

Rank Assistant Professor

Department Social Science (7080)

Responsibility to Department Chairperson

Salary \$                      per                     

Employee Benefits:

Social Security (FICA) \$                     

Retirement (TIAA-CREF)                     

Hosp. Ins. (B.C.-B.S.-M.M.)                     

Workers' Compensation                     

Total Disability Ins. (TIAA)                     

Life Insurance (TIAA)                     

Total Compensation \$                     

- (2) The policies and practices listed in the Faculty Manual are agreed upon by the parties hereto.
- (3) Benefits other than Social Security must be applied for by the faculty member at the Office of Personnel Services. Failure to apply indicates waiver of the benefit.
- (4) This signed Agreement must be returned to the President's office by the date specified.
- (5) U.S. Government form W-4 must be on file in the Office of Personnel Services.

IN WITNESS WHEREOF, the said parties have hereunto agreed to the above terms and have set their hands at Marywood College, in said State, as follows:

                      
Date Accepted

(Signed)                       
First Party

                      
Date Executed

(Signed)                       
President



# Marywood

## U N I V E R S I T Y

### FACULTY HANDBOOK

**July 1, 2010**

**Reap College of Education and Human Development  
Insalaco College of Creative and Performing Arts  
College of Health and Human Services  
College of Liberal Arts and Sciences  
School of Architecture**

Address comments or questions  
to

Secretary of the University  
Marywood University  
Scranton, PA 18509-1598

# **FACULTY HANDBOOK**

**This handbook is effective with  
the 2010-2011 faculty letters of agreement.**

**Marywood University  
Scranton, Pennsylvania  
18509**

## INTRODUCTION

The faculty of Marywood University are dedicated professionals who have an important role in providing intellectual leadership. They are committed to the service of the University, their disciplines, and others. While the teaching role of the faculty is primary, they devote time and energy to a variety of activities. They serve on committees and contribute their talent to strategic planning, research, grant writing, and recruitment.

It would be impossible to capture in detail in one handbook all of the many issues that affect faculty. The *Faculty Handbook* is intended to be one of several sources of general guidance. It brings together brief descriptions of the privileges and obligations that are most central to membership on the faculty of Marywood University and selected other information of special interest.

Nothing contained in the *Faculty Handbook* negates the right of the University to augment, repeal, or revise its policies at any time. Policy changes require the approval of the President of the University and, when required, the Board of Trustees. Changes are disseminated by the Secretary of the University. They are effective with formal approval and placement in the *Marywood University Policies and Procedures Manual*.

The *Faculty Handbook* is maintained by the Secretary of the University, who is responsible for updating and editing it. This assumes the authority to make non-substantive changes that improve the precision of its language, and substantive changes that are necessary to conform to applicable laws. To the extent that modification and revision of Chapter Two constitute other substantive changes, the Faculty Senate will be consulted in the interest of collegiality.



# Marywood

## UNIVERSITY

Tenured Faculty  
Letter of Agreement  
2011-2012 Academic Year

May 10, 2011

Dr. Frederick F. Fagal, Jr.  
17 East Lake Street  
Skaneateles, NY 13152

Dear Dr. Fagal, Jr.,

This Letter of Agreement is offered to you for the 2011-2012 Academic Year. In accord with the agreed upon Salary Plan, your salary reflects a 2.5% annual increase of \$ [REDACTED].

Other terms of this agreement are as follows:

Term:	8/22/2011 to 5/18/2012
Type of Appointment:	Full-Time (9 months) Tenure
Rank:	Associate Professor
College:	Liberal Arts & Sciences
Department:	Social Science
Responsible to:	Department Chairperson
Salary:	\$ [REDACTED]

Faculty members must apply for benefits other than Social Security and Worker's Compensation through the Human Resources Department. Full-time faculty benefits include health, dental, long-term disability, group life, and accidental death and dismemberment under the Flexible Benefits Plan. Elections are made by June 1 of each year for the subsequent fiscal year beginning July 1. Retirement contributions by the University vary based on the contribution level selected by the faculty member. The appropriate government forms, including Form W-4 and I-9, must be completed and on file in the Human Resources Department.

This agreement is valid for one month from the date of this letter. The original copy of this Letter of Agreement must be signed and returned to my office by June 10, 2011. If you do not return the original signed copy by June 10, it will be assumed that you are not returning to Marywood. On behalf of the Board of Trustees and myself, I express our gratitude for your dedicated service and commitment to Marywood University. May God continue to bless you.

Sincerely,

*Aster Anne Munley, IHM*

Anne Munley, IHM, Ph.D.  
President

Agreed this 25 day of May, 2011

Signature

*Frederick F. Fagal, Jr.*





## Contractual Agreements with Faculty Members

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### Policy Statement

#### Full -Time Faculty

The *Letter of Agreement* is the official contract issued to a faculty member at the time of appointment or reappointment. It is a statement of conditions and obligations mutually agreed to by the faculty member and Marywood University. It serves as a binding contract covering a specific period of time and as a vehicle to renew, adjust and/or alter the terms of the original contract regarding appointment, rank, tenure, salary, benefits, etc.

Faculty contracts are normally for a period of nine months or twelve months.

Ordinarily, the academic year will begin no earlier than two weeks before Labor Day and will end no later than nine months from that date.

A copy of the *Letter of Agreement* is retained by the faculty member. Copies are also on file in the Office of Human Resources.

In general, any faculty member, who intends to be a long-term stakeholder in the University and who has the appropriate terminal academic degree, should have either a tenure appointment or an appointment probationary for tenure.

#### *Categories of Full-Time Appointment*

Regular membership in a Faculty includes appointments with continuous tenure, appointments probationary for tenure, and contract appointments without tenure.

Membership in the Faculty of a School or Department is held by persons with valid appointments to one of the four generally recognized Faculty ranks, namely, Professor, Associate Professor, Assistant Professor, or Instructor.

The University, however, also requires the services of professionally competent individuals to meet teaching and service responsibilities in selected areas or positions in which assignments do not necessarily include research or creative work. To meet these responsibilities effectively and to be competitive in attracting and retaining needed professional personnel, the University has established and recognizes a third kind of Regular Faculty appointment: Regular Contracts Appointments without Tenure.

#### Contract Appointments with Tenure

The probationary period shall not exceed seven years of full-time teaching at Marywood, with application for tenure being made in the sixth year. Faculty members on leave during the probationary period must follow the policy on Leaves of Absence. Prior service at Marywood University or at another regionally accredited, four-year college or university may be credited toward the fulfillment of the probationary period as indicated in the original *Letter of Agreement*.

Tenure is a term designating guaranteed continuous appointment to full-time faculty members until retirement. It implies a mutual commitment on the part of the faculty member and the University and cannot be taken lightly. The commitment of a faculty member who requests tenure is as deep and binding on the faculty member as it is on the University. Just as the conferring of tenure by the University recognizes the competence of an individual faculty member, submission to the University of an application for tenure suggests a strong acceptance by that individual of the goals and objectives of the University. The request represents commitment to work jointly with faculty, students, administrators, and members of the staff for the growth and welfare of the University. It is a commitment to devote one's energies to continued personal development and continued high levels of achievement as a member of the Marywood academic community. It is a definite assertion of career goals; it is expected that faculty will not lightly withdraw from this relationship.

Once tenure is granted, it will be discontinued only for grave reason, which may include moral turpitude, flagrant abuse of academic freedom, or lack of professional competency as demonstrated in instruction and/or research. In addition, the University may be required to discontinue tenure because of severe financial exigencies of the University or reorganization of the department and/or curriculum resulting in lack of need as described in *Retrenchment of Faculty*.

A faculty member with an appointment probationary for tenure may apply for a Clinical or Per Annum appointment, if a vacancy exists, under normal procedures for recruitment and appointment. However, a faculty member in probationary status is not eligible to apply for such a change of status if that faculty member has been reviewed for tenure with the result that tenure was not recommended.

### **Contract Appointments without Tenure**

Two types of full-time contract appointments without tenure are available: Clinical Faculty Appointments and Per Annum Faculty Appointments.

#### **Clinical Faculty**

On the recommendation of the cognizant chairperson, or person acting in the capacity of a chair, with the approval of the Vice-President for Academic Affairs and based on a written description of the teaching and related duties, a Faculty position involving full-time teaching in a clinical or professional skills program may be designated as a non-tenure track clinical position. Titles associated with clinical positions shall be appropriately distinguishing, such as "Clinical Assistant Professors" as determined by the Vice-President for Academic Affairs.

The initial appointment may be for one or two years and may be renewed for successive terms under the same procedures as those applying to faculty members with appointments probationary for tenure. After six years of continuous service, subsequent reappointments may be for periods of up to five years but without tenure.

#### **Per Annum Faculty**

With the approval of the Vice-President for Academic Affairs and based upon a written description of the teaching and related duties, a faculty position involving full-time teaching for a period of one year may also be designated as a non-tenured position (Per Annum).

Normally a Per Annum appointment may be renewed on an annual basis for up to an additional five years, followed by a terminal contract for the seventh year of employment. If an exception is made, it will be done by

the Vice-President for Academic Affairs in consultation with the appropriate dean and director or chairperson. Notification of non-renewal shall follow the notice requirements of the Non-Reappointment of Full-Time Faculty Member policy.

Clinical or Per Annum appointments may be made at the level of Instructor, Assistant Professor, Associate Professor or Professor. A Faculty Member with a Clinical or Per Annum appointment is accorded parity of compensation, benefits and perquisites, and governance and voting rights, as with other Faculty members of comparable rank.

A Faculty member with a Clinical or Per Annum appointment may apply for an appointment probationary for tenure, if a vacancy exists, under normal procedures for recruitment and appointment. In such a case, time served in the Clinical or Per Annum position beyond the first year counts toward the maximum allowable period of probationary service. If time served in the Clinical or Per Annum position exceeds the maximum allowable period of probationary service, the Faculty member shall be considered to have completed five years of probationary service and shall be reviewed for tenure upon application for the change of status. In either case, in the event the outcome of the review is negative, the terms of the current Clinical or Per Annum appointment shall be honored but the Faculty member shall not be eligible for subsequent reappointment to the Clinical or Per Annum position.

### **Pro - Rata Faculty**

Pro-rata ranked faculty serve on nine-month or twelve-month contracts. Their contracts are processed and issued as are those of full-time faculty.

The initial appointment of pro-rata faculty determines their rank; their *Letters of Agreement* are awarded for one year at a time with no implied obligation of continuous appointment.

### **Part -Time Faculty**

Part-time faculty are those faculty members who ordinarily teach from one to six credit hours per semester and are not usually otherwise employed in the affairs of the University. They receive a formal appointment on a semester basis, provided enrollment justifies it at registration time. Part- time faculty members are not eligible for tenure.

### **Letters of Agreement**

*Letters of Agreement* for continuing faculty members are issued on or before May 10. *Letters of Agreement* are distributed from the office of the President of the University.

### **Appointment Procedures**

Members of the faculty are appointed by the President of the University. Prospective faculty members are interviewed and recommended by the chairperson and faculty of the department in which a vacancy exists to the Dean and Vice-President for Academic Affairs.

The formal offer of employment made by the Vice President for Academic Affairs to a prospective faculty member contains the conditions of continued employment and promotion as described during the interview process and as outlined in the *Faculty Handbook*.

Offers to part-time faculty are made by department chairpersons or those acting in the capacity of a chair, and concluded by an agreement approved by the appropriate academic dean. A part-time faculty member receives a formal appointment on a semester basis, provided enrollment justifies it at registration time. A part- time faculty member is not eligible for tenure.

## Related Policies

- [Promotion of Faculty Members](#)
- [Faculty Status](#)

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## History

07/01/89 - Reaffirmed with publication of Faculty Manual

02/24/99 - Revised, as recommended to the President by the Policy Committee of the University, to include possibility of opening the fall semester in August.

10/04/02 - Revised to change the reference to the opening date of the academic year, as recommended to the President of the University by the Policy Committee of the University.

03/28/08 - Revised to provide for permanent non-tenured faculty, as recommended to the President of the University by the Policy Committee of the University.

2/18/11 - Revision approved by the President of the University as recommended by the Policy Committee of the University.

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## Progressive Discipline

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### Policy Statement

Marywood University endorses a progressive discipline policy designed to promote resolution in a fair and orderly manner. This policy applies to faculty members with tenure or whose terms of appointment have not yet expired. Its objectives support the collegial relationships at Marywood University and are directed toward continual institutional improvement. Because the University regards disciplinary action as corrective and not punitive, the policy recognizes personal and professional problems that may be rectified by an informal educational process, as well as serious violations of professional responsibilities implicating possible recommendation for suspension or dismissal.

The policy is intended to provide an effective and flexible means of identifying problem areas, resolving complaints, and preventing repetitive incidents by prompt intervention and assistance. It is designed to accomplish these ends by a series of gradual steps involving strategies such as personal conferences, oral and written warnings, and opportunities for monitored assistance where applicable.

### Procedures

**Commencement.** Disciplinary action may be initiated by a complaint, oral or written, which alleges violation of institutional policy, practice, procedure or other functions and responsibilities of the faculty member in pursuing his or her customary teaching and institutional role. The complaint, which may reflect an incident or incidents of misconduct or deficiency, may be communicated to the faculty member's immediate supervisor or to the appropriate dean.

**Meeting with Administrator.** The administrator receiving the complaint shall discuss the matter with the faculty member in a confidential conference. If additional information from the faculty member provides a satisfactory explanation, the decision may be to close the matter then. If, however, additional light is not shed on the allegation or an explanation is not satisfactory, the administrator will specify corrective action to be taken, and the discussion will constitute an oral warning.

**Written Warning.** If the alleged problem continues or additional complaints are received, the immediate supervisor or dean must notify the Vice President for Academic Affairs, who shall conduct a preliminary investigation concerning the merits of the complaint. A written warning to the faculty member may follow where circumstances indicate that the problem is not resolved. The written warning will become a part of the faculty member's personnel file, but will be expunged after three years if no other written warnings have occurred.

**Suspension.** The faculty member may be suspended by the Vice President for Academic Affairs at any time during the proceedings involving him or her. Suspension is justified if immediate harm to the faculty member or others is threatened by the person's continuance in the faculty position. Unless in direct violation of the law, any

such suspension should be with pay.

***Special Assistance.*** In those circumstances where it is evident that the faculty member is in need of special professional assistance, the Vice President for Academic Affairs may require in writing any of the following remedial actions:

- counseling and/or another type of treatment program, such as Alcoholics Anonymous or Narcotics Anonymous;
- psychological counseling and/or treatment, including out-patient treatment prescribed by a duly credentialed and qualified professional;
- peer faculty monitoring to assist in resolving work-related performance problems;
- a specified number of periodic conferences with the faculty member's Dean to assist in resolving administrative or institutional problems.

Special professional assistance will be for a specific period of time. Where the assistance necessitates in-patient treatment or time away from teaching, that temporary time-off shall be with pay. During the period of assistance, the faculty member shall communicate weekly or at other intervals specified by the Vice President for Academic Affairs, who shall monitor the faculty member's progress to determine when and if the special assistance has achieved its objective. Part of this monitoring function may involve the faculty member providing summary statements from treatment providers regarding compliance and prognosis. If the faculty member has refused to participate, or the remedial objective has not been reached during the specified period of time, a recommendation to terminate employment may be made to the President of the University.

### ***Dismissal***

If remedial actions(s) taken during the suspension does not sufficiently resolve the issues that lead to the suspension, the university may move towards dismissal of the faculty member.

### ***Ad Hoc Faculty Committee***

Faculty members have the right to convene an ad hoc committee in order to appeal either a decision to suspend the faculty member or a decision to dismiss the faculty member.

- Having received a written recommendation for either suspension or dismissal from the Vice President for Academic Affairs, the President of the University sends a written communication to the faculty member, stating with reasonable particularity the basis for suspension or dismissal and offering, if requested by the faculty member within 10 days, to convene a tenured faculty ad hoc committee to consider the matter, to render confidential advice, and thereby to effect a remedy if possible.
- Should the faculty member request a review by an ad hoc committee, it shall consist of three members selected in the following order: (a) one tenured faculty member selected by the person seeking assistance, and (2) two tenured faculty members selected by the Executive Council of the Faculty Senate. The choice of members should be on the basis of their objectivity and competence and of the regard in which they are held in the academic community. The President of the University or his/her delegate has the option of attending the meetings of the Committee. Should a faculty member request that such a committee be convened twice (i.e., once for suspension and once for dismissal), the membership of the committee may be similar or different, a determination which is made by the President of the University in consultation with the faculty member and the Vice President for Academic Affairs. Normally the committee would make its

recommendation within 30 days of being convened.

- The Committee elects its own Chair, who sends the opinion of the committee in writing to the President of the University, copied to the faculty member and to the Vice President for Academic Affairs. If the opinion of the Faculty Committee is that the matter is successfully resolved or that there is no merit to the complaint, a recommendation shall be made to discontinue proceedings. If the problem has not been corrected and reason still exists to question the fitness of the faculty member, the recommendation shall be to either continue a suspension or initiate a formal action toward dismissal.

**Publicity.** Public statements by the faculty member or others about possible or actual termination of employment should be avoided.





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## Related Policies

- [Teaching Responsibility](#)
- [Librarianship Responsibility](#)
- [Tenure](#)
- [Faculty Status](#)
- [Academic Workload](#)

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## History

07/01/89 - Reaffirmed with publication of Faculty Manual

12/12/97 - Addition of informal process approved by the President of the University as recommended by the Policy Committee of the University

07/01/03 - Editorial changes made to reflect academic restructuring

10/12/11 - Revision approved by the President of the University as recommended by the Policy Committee of the University

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**4.2 CIVIL RIGHTS COMPLAINT PROCEDURES**

(Revision approved by the President of the University 4/03/00, 7/21/03, 6/24/09)

The following process must be followed any time a member of the Marywood University community believes s/he has been the victim of or witness to discrimination, harassment, or assault by any member of the University community on University property or any property controlled by the University. Any individual who believes s/he has been subject to discrimination on the basis of disability should file a grievance consistent with Marywood's *Disability Grievance Procedures*. Confidentiality is expected of all persons involved in the process.

In furtherance of Marywood University's commitment to its duties and obligations, regular training on harassment, discrimination and related topics is provided for managers and supervisors in the Marywood community.

**Internal Process**

1. As soon as possible, but not later than 30 working days, except in unusual circumstances, after the alleged incident(s) occurs, the complainant must present the complaint to the appropriate University administrator as listed below:

Claims Against Faculty Members or Librarians

Contact: Academic Dean or Director of Library and/or Provost and Vice President for Academic Affairs

Claims Against Administrators, Professional Staff, or Support Staff Members

Contact: Immediate supervisor and/or a vice president

Claims Against Students

Contact: Dean of Students and/or Vice President for Student Life.

In all cases, individuals may contact the Assistant Vice President for Human Resources and Affirmative Action Officer if they feel they cannot contact the appropriate individual as noted.

In cases that involve two or more categories of Marywood community members, the University administrator first contacted will consult with the President of the University to determine the appropriate course of action.

2. The initial discussion between the complainant and the University administrator will be kept confidential to every extent possible. The University administrator must contact the Assistant Vice President for Human Resources and Affirmative Action Officer in cases involving employees.
3. If the complainant, after an initial meeting with the University administrator, decides to proceed, the complainant submits within 10 working days a formal complaint, preferably in writing, to the appropriate University administrator. The complaint must include detailed factual information concerning the incident(s), and should include what the victim feels will correct the situation.

In certain serious cases the University administrator may proceed even without a formal complaint.

Cases involving alleged discrimination, harassment, and sexual assault are particularly sensitive and demand special attention to issues of confidentiality. Dissemination of information relating to the case is to be limited, so as to insure, as fully as possible, the privacy of the individuals involved.

4. The University administrator must inform both parties of the need for confidentiality. Any individual who retaliates against the complainant will be subject to discipline up to and including discharge from employment and/or termination of student status.
5. Within 5 working days after receipt of a formal complaint, the University administrator must initiate the appropriate steps to effect an informal resolution of the complaint that will be acceptable to both the complainant and the alleged offender.
6. Within 10 working days after the initiation of the steps to effect an informal resolution, the University administrator must provide a written summary of the complaint and the proceedings to date to both the complainant and the alleged offender. Appropriate remedial action will be determined by the University administrator after consultation with executive officer(s) and/or legal counsel if deemed necessary. Action will be taken to eliminate the discriminatory or harassing conduct, including but not limited to warning, suspension, transfer, community service, discipline, discharge, or dismissal of the offender or anyone making a knowingly false complaint. The remedial action may also include offering assistance/training to the victim and/or the offender. The parties will be formally notified of the final decision, including punishment or sanctions, if any.
7. Either party, if not satisfied with the informal resolution proposed by the University administrator, will have 10 working days to file an appeal. Appeals must be in writing and submitted to the President of the University. Within 5 working days, the President will direct the appeal to the appropriate University body, described below. The appeals committee will have 30 working days to review and make a recommendation to the President of the University. The President of the University will provide a written response to the appellant within 10 working days of the receipt of the appeals committee's recommendation. The decision of the President of the University is final and binding internally.

**Claims against Faculty Members including Librarians, Administrators, Professional Staff, and Support Staff**

The President of the University will appoint and convene a committee of 5 employees comprised of professional staff, administrators and/or faculty who are independent of the claim.

Note: Claims by faculty members against faculty members may choose to contact the Faculty Grievance and Appeals Committee in lieu of this process.

**Claims against Students**

The President of the University will refer the appeal to the Vice President for Student Life within 5 working days. The Vice President for Student Life will convene an Appeal Board within 3 working days of the President's notification. The Appeal Board will have 30 working days to review and make a recommendation to the Vice President for Student Life. The Vice President will notify the President of the recommendation within 3 working days. The President of the University will provide a written response to the appellant within 10 working days of the receipt of the appeals committee's recommendation. The decision of the President of the University is final and binding internally.

**External Process**

Victims may choose to file a report with the proper law enforcement authorities. Marywood University has personnel on staff who can explain criminal complaint procedures and assist victims in beginning the process. Police investigation and legal prosecution are conducted outside of and in addition to University procedures.

## Resources

A list of Marywood University and community resources is available at the Human Resources Office and the Student Life Offices.

Students are encouraged to use the services of the Counseling and Student Development Center, the Student Health Services Office, and the Students with Disabilities Services Office.

## 4.3

### DISABILITY GRIEVANCE PROCEDURES

(Approved by the President of the University 6/24/09)

**Students are strongly encouraged to contact the Office of Student Support Services at the first sign of any difficulties obtaining their approved academic accommodations from faculty, or if they encounter difficulties related to their disabilities from any Marywood University staff, administrators, or students.**

It is the policy of Marywood University not to discriminate on the basis of disability. The University has adopted an internal grievance procedure providing for prompt and equitable resolution of grievances by either students or employees alleging any action prohibited by Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) or the relevant U.S. Department of Health and Human Services regulations implementing the Act (34 C.F.R. Part 104) (together, "Section 504"). Section 504 prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance. The Law and Regulations may be examined in the office of the Section 504 Coordinator, Dr. Patricia E. Dunleavy, Assistant Vice President for Human Resources and Affirmative Action Officer, who has been designated to coordinate the efforts of the University to comply with Section 504.

Any person who believes she or he has been subjected to discrimination on the basis of disability may file a grievance under this procedure. It is against the law for the University to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance. The University will make every effort to protect the grievant from retaliatory action. Any individual who retaliates against the grievant will be subject to discipline up to and including discharge from employment and/or termination of student status.

## Procedures

All alleged incidents involving disability discrimination are to be dealt with immediately. When a Marywood University employee or student believes s/he has been the victim of disability discrimination or witnessed disability discrimination, the following procedures should be used:

1. Grievances must be submitted to the Section 504 Coordinator, or her designee, within 30 calendar days of the date the person filing the grievance becomes aware of the alleged discriminatory action. (Special circumstances warranting later filings will be considered on a case-by-case basis.) A grievant may contact the Vice President for Enrollment Management if he or she feels he or she cannot contact the Section 504 Coordinator, who will designate an appropriate person to fulfill the Section 504 Coordinator's responsibilities under this policy.
2. A grievance must be in writing and must contain the name, address and other contact information of the grievant, describe the problem or alleged action alleged to be discriminatory in sufficient detail to inform the Section 504 Coordinator of the nature and date of the alleged violation and permit an adequate investigation to be conducted, include the names of University employees or students involved and state the remedy or relief sought.

## Faculty Grievances and Appeals

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### Policy Statement

As an institution of higher education, Marywood University brings together a faculty, administration, and governing board united in a common bond of academic purpose. Essential to the fulfillment of this purpose is a mutual recognition of institutional integrity and individual human rights, along with an understanding of the respective roles of the several entities which constitute this educational organization.

Circumstances may arise at times, however, wherein a grievant--full-time, part-time, or pro-rata--may question decisions which affect his/her professional role in the institution. To assist in the resolution of these matters, a series of guidelines for grievances is herein set forth.

### Definitions

**Grievance:** A grievance refers to any disagreement between two parties. A grievance identifies a complaint one party has against another party for some alleged wrongful action on the part of the second party.

**Grievant:** A Grievant initiates a grievance.

### Types of Issues That Can Be Grieved

It is understood that procedural rather than substantive factors provide appropriate areas of review, and the Faculty Grievance Committee will not attempt to substitute its judgment for that of the decision-maker(s) involved in the case.

Thus, the Faculty Grievance Committee will hear grievances concerning:

- 1) Allegations of violation of academic freedom resulting in: denial of tenure, promotion, or sabbatical leave; non-reappointment.
- 2) Allegations of impermissible discrimination. Tenured and non-tenured faculty are protected against illegal or unconstitutional discrimination, or on any basis not relevant to job performance, and includes, but is not limited to, race, sex, religion, national origin, age, disability, marital status, or sexual orientation
- 3) Allegations of inadequate consideration resulting in: denial of tenure, promotion, or sabbatical leave; non-reappointment; or termination of employment due to retrenchment.
- 4) Allegations of violations of procedures used in rendering decisions in numbers 1 and 2 above as set forth in Chapter 2 of the *Faculty Handbook*.

Procedures regarding dismissal, suspension, and sanctions of faculty members are in the *Progressive Discipline*

policy.

Should a grievant allege cause for grievance in any matter not identified in the above guidelines, the grievant may consult the Faculty Grievance Committee. In such circumstances, the Committee's first decision is whether the complaint is appropriate and sufficiently serious to merit consideration.

### **Persons Against Whom Grievances May be Directed**

Fundamentally, a grievance may arise from an allegation of improper implementation of a procedure or process leading to a decision. The person(s) or body who perform(s) that procedure or process is (are) the subject(s) of the grievance. Thus, a grievant may direct a grievance against the person(s) or body responsible for the decision identified herein.

The decisions or actions of the Faculty Grievance Committee or Ad Hoc Hearing Committee may not themselves be grieved.

## **Procedures**

### **Informal Procedure**

- 1) A member of the faculty must initially discuss a complaint with the person or body responsible for the action to which the grievant takes exception in order to determine if a resolution is possible.
- 2) A complaint must be presented within (10) calendar days of the occurrence or discovery of the alleged violation.
- 3) No grievance may be filed without the initiation of this informal complaint procedure.
- 4) If the grievance still exists after step one the grievant initiates a consultation with the Vice President for Academic Affairs in order to try to resolve the matter.

### **Formal Procedure for Filing a Grievance**

- 1) The Faculty Grievance Committee is convened.

### **Faculty Grievance Committee**

The Faculty Grievance Committee consisting of three tenured faculty members and two alternates (also tenured) is specifically charged with responsibility for resolving matters of grievance and appeal. The Faculty Senate conducts the election of this committee. Faculty currently serving on the Rank and Tenure Committee or the Faculty Development Committee are not eligible for election to this committee.

The term of each member extends for three years, with one person replaced each year. An alternate will be identified at each election. Any member of the Grievance Committee who has had any prior involvement in a case under consideration must recuse him/herself. The Grievance Committee shall annually elect a chair-elect who will succeed the Chair.

### **Grievance Process**

The grievant may consult the President of Faculty Senate for assistance in contacting the Faculty Grievance Committee Chair. The Chair should be provided with a written statement setting forth, in detail, the nature of the grievance or appeal and identifying the person(s) or body against whom the grievance or appeal is directed; this document may also include a proposal for resolving the issue. A grievance must be filed within thirty (30) calendar days of the occurrence or discovery of the alleged violation but not fewer than five (5) calendar days after the initiation of the informal complaint.

In considering the grievance or appeal, the Faculty Grievance Committee will take the following steps:

- 1) The Committee notifies the decision maker(s) that a grievance has been filed.
- 2) The Grievance Committee requests from the grievant written information regarding the issues. The Grievance Committee also requests from the decision maker(s) written statements describing the basis for the decision being appealed or grieved, as well as any attempts to settle the matter informally. This information shall be held in confidence by the Grievance Committee. At this point in the process, the information gathered is solely for review by the Committee and is not to be shared with either party involved.
- 3) At any point, the Grievance Committee may request additional information in writing from the grievant and from the decision-maker(s).
- 4) If after completing the above steps, the Committee determines that the grievance is improper or unsubstantial, or that sufficient time had not yet been allowed for its normal resolution, or that there is no evidence of improper action on the part of the decision maker(s) which would constitute a legitimate grievance, the Committee will communicate this determination to the grievant and the decision maker(s).
- 5) If the Grievance Committee determines that there was inadequate consideration or violation of procedures (see No. 3 and 4 under Types of Issues Which Can Be Grieved above), the Committee will return the case to the decision maker for reconsideration.
- 6) If the grievance is deemed appropriate for mediation, the Chair will appoint a Mediator from the University. The Mediator does not represent either party. Any party may object to the Mediator on the grounds of actual or apparent bias or conflict of interest and submit such objections to the Chair in writing. The Chair will review the objections and may replace the mediator.
- 7) The Offices of the Vice President for Academic Affairs or Human Resources may be consulted by the Mediator on mediation procedure or other matters involved in the grievance.
- 8) The Mediator shall try to resolve the grievance within thirty (30) calendar days of formal submission to the chair. With the consent of both parties, the period of mediation may be extended for a short period of time. If the grievance is not resolved within the thirty (30) calendar days, the mediator will advise the chair of the committee in writing that the issue has not been resolved. If a mutually accepted agreement is reached, this will be communicated to the chair of the committee.
- 9) Grievances not appropriate for mediation or grievances not resolved through mediation shall be referred to the Ad Hoc Hearing Committee. All evidence collected will be passed on to the Ad Hoc Hearing Committee.
- 10) If the Faculty Grievance Committee recommends a formal hearing, in cases of violation of academic freedom or impermissible discrimination, an Ad Hoc Hearing Committee will be created to conduct a formal

investigation and to arrive at a recommendation for resolving the issue.

11) The Grievance Committee will make a summary report of its activities at the end of each academic year to the Faculty Senate. No details relevant to the privacy of the participants in any cases will be included in this report.

### **Ad Hoc Hearing Committee**

The Ad Hoc Hearing Committee shall consist of three members, selected by the Faculty Senate Executive Council, from a standing committee of fifteen tenured Faculty Members elected for one-year terms by the faculty at large. The Faculty Senate conducts the election of this committee.

Each party shall have two challenges without stated cause regarding membership of the Ad Hoc Hearing Committee. No member of the Ad Hoc Hearing Committee shall have had any prior involvement in the case.

If the three-person Ad Hoc Hearing Committee cannot be chosen from the fifteen members of the standing committee, the Executive Council of the Faculty Senate is empowered to conduct a special election to obtain fifteen additional members with terms of one year.

The Ad Hoc Hearing Committee must select a chairperson.

### **Ad Hoc Hearing Procedures**

1) The Ad Hoc Hearing Committee is empowered to gather information and documents specific to the case of the Grievant, conduct interviews, hold a hearing and take actions as are necessary to investigate the grievance to the extent that the law and University policy permit. The Ad Hoc Hearing Committee will provide recommendations in writing forty (40) calendar days from the date of its official appointment.

2) All Hearings are closed to anyone other than the parties and their advisors, members of the Ad Hoc Hearing Committee, and any witnesses invited to testify by the Committee. The hearing may be audio or video recorded and a written record will be maintained. The hearing is not a legal proceeding. At the beginning of the hearing, all procedures will be made known to the parties, and all information will be kept confidential.

3) Each party to the grievance may have one advisor during the hearing. The advisor may not participate in the hearing.

4) Strict rules of legal evidence will not be binding upon the Ad Hoc Hearing Committee and evidence of probative value in defining issues may be admitted.

5) The hearing record will be used exclusively as the basis for findings of fact and for arriving at a decision.

6) Upon reaching a decision on the issue and a recommendation for action, the Ad Hoc Hearing Committee will provide a summary written report to the petitioner, the person(s) named in the grievance, and the appropriate administrative officer and the President.

7) After receiving the recommendation of the Ad Hoc Hearing Committee, the appropriate administrative officer will review the recommendation and notify the Ad Hoc Hearing Committee and petitioner whether the recommendation has been accepted. If the recommendation of the Ad Hoc Hearing Committee is not



accepted by the appropriate administrative officer, the administrative officer will review it with the Ad Hoc Hearing Committee.

8) No details relevant to the privacy of the participants in the case will be included in the notice from the Hearing Committee. Public statements and publicity about the case by the participants will be avoided until the proceedings have been completed, including consideration by the President

### **Action by the President of the University**

Following the recommendation of the Ad Hoc Hearing Committee, should the petitioner desire further consideration of the issue beyond the immediate administrative channels of the University, the President may be requested, within twenty calendar days, to review the case.

This review will be based on the record from the committee hearing and may provide opportunity for argument, oral or written, or both, by the principals. Then the President will then make the final decision.

### **Responsibility for Expenses Incurred in Grievance and Appeal**

Expenses incurred by the grievant are the responsibility of the individual. These include, but are not limited to, the following:

Cost of an advisor.

Travel expenses for advisor, witnesses, or others engaged by petitioner.

Cost of preparing any documents and copies thereof.

### **Withdrawal of a Grievance**

The grievance can be withdrawn at any point in the process.

### **Non-Retaliation**

Grievants will not be adversely affected for exercising their right to file a grievance, regardless of outcome.

Grievants will not be subject to adverse consequences for either initiating a grievance or in presenting evidence on behalf of a grievant. Anyone who violates this mandate can be subject to disciplinary action, up to and including dismissal.

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## **Related Policies**

- [Academic Freedom](#)
- [Disability Grievance Procedures](#)
- [Civil Rights Policy](#)
- [Civil Rights Complaint Procedures](#)
- [Sabbatical Leave for Faculty Member](#)
- [Non-reappointment of Faculty Member](#)

- [Promotion of Faculty Members](#)
- [Evaluation of Faculty Members](#)
- [Retrenchment of Faculty](#)
- [Tenure](#)
- [Progressive Discipline](#)

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## History

10/02/92 - Proposal returned to committee of Faculty Senate by College Committee on Policy

11/13/92 - Proposed policy dated 3/13/92, as amended, recommended by College Committee on Policy to the President

04/26/93 - Presidential approval affirmed with publication of the President's Memo

03/20/98 - Revision proposed by Faculty Senate approved by the President of the University as recommended by the Policy Committee of the University

04/29/11 - Revision approved by the President of the University as recommended by the Policy Committee of the University

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Mary T. Gardier Paterson, Esquire | Secretary of the University | [mtgpaterson@marywood.edu](mailto:mtgpaterson@marywood.edu)

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Marywood

UNIVERSITY

OFFICE OF THE PRESIDENT

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SCRANTON, PA 18509-1598

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FAX: (570) 340-6014

EMAIL: ANNEMUNLEY@MARYWOOD.EDU

www.marywood.edu

April 3, 2012

Dr. Frederick F. Fagal, Jr.  
17 East Lake Street  
Skaneateles, NY 13152

Dear Dr. Fagal,

I have received your letter dated March 29, 2012. You chose to file a grievance under the Marywood University Faculty Grievance and Appeals Policy and chose not to convene an ad hoc committee to review my recommendation as I had offered to you on two occasions. The Faculty Grievance Committee reviewed your grievance and found no evidence of improper action on my part which would constitute a legitimate grievance.

Since the grievance process is now complete, I have decided to finalize my recommendation. As a result, your employment with Marywood and your tenure are terminated effective today, April 3, 2012.

Further, to provide you with a review of my decision, I will consider your letter dated March 29, 2012 as your authorization for me to convene two faculty ad hoc committees to appeal my decisions to suspend you and to terminate your employment and tenure. I am doing this despite the fact that on two separate occasions you refused my offer and did not choose to convene an ad hoc committee to review my decision to suspend you and my recommendation to terminate your employment and tenure before I finalized my decision.

According to the terms of the Progressive Discipline Policy, you must now select a tenured faculty member for the ad hoc committee. Please submit the name of your selection to Sr. Gail Cabral, President of the Faculty Senate, as soon as possible.

Sincerely,

Sister Anne Munley, IHM  
President

# Exhibit 5

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FREDERICK F. FAGAL, JR.,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO. 3:14-cv-2404-
v.	:	ARC
	:	
MARYWOOD UNIVERSITY,	:	
	:	
Defendant.	:	
	:	

**DEFENDANT’S ANSWER TO PLAINTIFF’S  
AMENDED COMPLAINT AND AFFIRMATIVE AND OTHER DEFENSES**

Defendant Marywood University (“Defendant”), by and through its undersigned counsel, hereby responds to the Amended Complaint of Frederick F. Fagal, Jr. (“Plaintiff”) as follows:

**PARTIES**

1. Admitted.
  
2. Admitted in part, denied in part. Defendant admits that Plaintiff is a natural person. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in Paragraph 2 and, thus, they are denied.
  
3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 and, thus, they are denied.
  
4. Admitted.

5. Admitted.

6. Admitted.

### **JURISDICTION AND VENUE**

7. The allegations in Paragraph 7 are legal conclusions to which no response is required. To the extent the allegations in Paragraph 7 require a response, they are denied.

8. The allegations in Paragraph 8 are legal conclusions to which no response is required. To the extent the allegations in Paragraph 8 require a response, they are denied.

9. The allegations in Paragraph 9 are legal conclusions to which no response is required. To the extent the allegations in Paragraph 9 require a response, they are denied.

### **FACTUAL BACKGROUND**

10. Admitted in part, denied in part. Defendant admits only that Plaintiff received a document entitled “Agreement and Appointment for Full-Time Faculty,” a partially redacted copy of which is attached to his Amended Complaint. The “Agreement and Appointment for Full-Time Faculty” is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

11. Denied.

12. Admitted.

13. Admitted.

14. Admitted in part, denied in part. Defendant admits only that on July 1, 2010, it issued an edition of its Faculty Handbook. The Faculty Handbook is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

15. Admitted.

16. Admitted in part, denied in part. Defendant admits only that it had a “Contractual Agreements with Faculty Members” policy in May 2011. The policy is a document that speaks for itself and, thus, all characterizations of it are denied.

17. The allegations in Paragraph 17 are legal conclusions to which no response is required. To the extent the allegations in Paragraph 17 require a response, they are denied.

18. Admitted in part, denied in part. Defendant admits only that in November 2011, Plaintiff scheduled a speaker from the Foundation for Individual Rights in Education (“FIRE”) to come to the University in connection with one of Plaintiff’s courses. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in Paragraph 18, and thus they are denied.

19. Admitted in part, denied in part. Defendant admits only that Plaintiff received approval from Defendant to hang posters announcing the speaker from FIRE. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in Paragraph 19 and, thus, they are denied.

20. Admitted in part, denied in part. Defendant admits only that it removed some of Plaintiff's posters announcing the FIRE speaker. The remainder of the allegations in Paragraph 20 are denied.

21. Denied.

22. Denied.

23. Admitted.

24. Admitted. By way of further answer, Plaintiff's January 13, 2012 email to Defendant's faculty contained hyperlinks to vulgar and highly offensive YouTube videos depicting Defendant's personnel as Adolph Hitler and other members of the Nazi regime.

25. Admitted in part, denied in part. Defendant admits only that on January 23, 2012, one of Defendant's deans visited Plaintiff and advised that President Munley was requesting a meeting with him. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in Paragraph 25, and thus they are denied.



26. Admitted in part, denied in part. Defendant admits that on January 23, 2012, President Munley met with Plaintiff regarding whether he posted the YouTube video likening Defendant's faculty to Nazis, and that Plaintiff admitted doing so. Defendant further admits that Plaintiff was suspended immediately and advised to return his keys and identification to Defendant's Human Resources Department. The remainder of the allegations in Paragraph 26 are denied.

27. Admitted.

28. Admitted in part, denied in part. Defendant admits only that it has a "Progressive Discipline" policy, a copy of which is attached to Plaintiff's Amended Complaint. The policy is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

29. Denied.

30. Admitted in part, denied in part. Defendant admits that Plaintiff was suspended. Defendant denies that this was a breach of contract and the remainder of the allegations in Paragraph 30.

31. Denied.

32. Admitted in part, denied in part. Defendant admits that on January 24, 2012, President Munley sent Plaintiff a letter recommending Plaintiff be terminated. Defendant denies the remainder of the allegations in Paragraph 32.

33. Admitted in part, denied in part. Defendant admits that President Munley sent a letter to Plaintiff on January 24, 2012. The letter is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

34. Admitted in part, denied in part. Defendant admits only that a portion of the second charge against Plaintiff was inadvertently omitted in President Munley's January 24, 2012 letter. The remainder of the allegations in Paragraph 34 are denied.

35. Admitted in part, denied in part. Defendant admits only that Plaintiff, through his attorney, requested an amended Statement of Charges and that President Munley sent a letter to Plaintiff on February 8, 2012. The remaining allegations in Paragraph 35 are denied.

36. Admitted in part, denied in part. Defendant admits that President Munley sent a letter to Plaintiff on February 8, 2012. The letter is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

37. Admitted in part, denied in part. Defendant admits that President Munley sent a letter to Plaintiff on February 8, 2012. The letter is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

38. Admitted in part, denied in part. Defendant admits that President Munley sent a letter to Plaintiff on February 8, 2012. The letter is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

39. Admitted in part, denied in part. Defendant admits that President Munley included a document entitled “Release of Personal Information” in her February 8, 2012 letter to Plaintiff. The release is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

40. Admitted in part, denied in part. Defendant admits only that it has a “Progressive Discipline” policy, which was in effect at the time of Plaintiff’s termination. The policy is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied. The remainder of the allegations in Paragraph 40 are denied.

41. Admitted in part, denied in part. Defendant admits only that Plaintiff’s suspension began on January 23, 2012. The remainder of the allegations in Paragraph 41 are denied.

42. Admitted in part, denied in part. Defendant admits only that it has a “Civil Rights Complaint Procedures” policy, which was in effect at the time of Plaintiff’s termination. The policy is a document that speaks for itself, and, thus,

all accurate quotations are admitted and all mischaracterizations of it are denied. The remainder of the allegations in Paragraph 42 are denied.

43. The allegations in Paragraph 43 are legal conclusions to which no response is required. To the extent the allegations in Paragraph 43 require a response, they are denied.

44. Admitted in part, denied in part. Defendant admits only that President Munley sent letters to Plaintiff on January 24, 2012 and February 8, 2012. These letters are documents that speak for themselves and, thus, all accurate quotations are admitted and all mischaracterizations of them are denied.

45. Admitted in part, denied in part. Defendant admits only that President Munley sent letters to Plaintiff on January 24, 2012 and February 8, 2012. These letters are documents that speak for themselves and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

46. Admitted in part, denied in part. Defendant admits only that President Munley sent letters to Plaintiff on January 24, 2012 and February 8, 2012. These letters are documents that speak for themselves and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

47. Admitted in part, denied in part. Defendant admits only that it has a “Progressive Discipline” policy, which was in effect at the time of Plaintiff’s

termination. The policy is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

48. Admitted in part, denied in part. Defendant admits only that Plaintiff, through his attorney, communicated with Defendant on February 2, 2012. The communication is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

49. Admitted in part, denied in part. Defendant admits only that its counsel sent a letter to Plaintiff's counsel on February 9, 2012. The letter is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

50. Denied.

51. Admitted in part, denied in part. Defendant admits only that on February 22, 2012, Plaintiff filed a grievance against President Munley. The remainder of the allegations in Paragraph 51 are denied.

52. Admitted in part, denied in part. Defendant admits only that Plaintiff filed a grievance against President Munley. The grievance is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

53. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53 and, thus, they are denied.

54. Admitted in part, denied in part. Defendant admits only that on April 3, 2012, President Munley sent a letter to Plaintiff. The letter is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

55. Admitted in part, denied in part. Defendant admits only that on April 3, 2012, President Munley sent a letter to Plaintiff. The letter is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied. The remaining allegations in Paragraph 55 are denied.

56. Denied.

57. Admitted in part, denied in part. Defendant admits only that it has a “Progressive Discipline” policy, which was in effect at the time of Plaintiff’s termination. The policy is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied. The remaining allegations in Paragraph 57 are denied.

58. Admitted in part, denied in part. Defendant admits only that it has a “Faculty Grievances and Appeals” policy, which was in effect at the time of Plaintiff’s termination. The policy is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied. The remaining allegations in Paragraph 58 are denied.

59. Admitted.

60. Admitted in part, denied in part. Defendant admits only that the Faculty Senate Ad Hoc Hearing Committee issued a document titled “Review of Sister Anne Munley’s Decision to Terminate the Employment and Tenure of Dr. Frederick Fagal.” This review is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

61. Denied.

62. Admitted in part, denied in part. Defendant admits only that it had a “Progressive Discipline” policy, which was in effect at the time the Faculty Senate Ad Hoc Hearing Committee issued its “Review of Sister Anne Munley’s Decision to Terminate the Employment and Tenure of Dr. Frederick Fagal.” The policy is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

63. Denied.

64. Denied.

65. Admitted in part, denied in part. Defendant admits only that on July 13, 2012, President Munley sent Plaintiff a letter. The letter is a document that speaks for itself, and, thus, all accurate quotations are admitted and all mischaracterizations of it are denied.

66. Admitted.

67. Denied.

**COUNT I**  
**Breach of Contract**

68. Defendant incorporates by reference its responses to Paragraphs 1-67 as if fully set forth herein.

69. To the extent the allegations contained in Paragraph 69 are legal conclusions, no response is required. The remainder of the allegations in Paragraph 69 are denied.

70. To the extent the allegations contained in Paragraph 70 are legal conclusions, no response is required. The remainder of the allegations in Paragraph 70 are denied.

71. To the extent the allegations contained in Paragraph 71 are legal conclusions, no response is required. The remainder of the allegations in Paragraph 71 are denied.

Defendant denies that Plaintiff is entitled to any relief requested in the WHEREFORE clause of the Amended Complaint.

Defendant denies any allegation not specifically admitted, denied, or referred to on information and belief.

WHEREFORE, Defendant respectfully requests that this Court:

- a. Dismiss the Amended Complaint in its entirety;



b. Deny each and every demand, claim and prayer for relief contained in the Amended Complaint;

c. Award to Defendant reimbursement for reasonable attorneys' fees and costs incurred in defending this meritless and vexatious action; and

d. Grant such other and further relief as the Court may deem just and proper.

## **AFFIRMATIVE AND OTHER DEFENSES**

### **FIRST DEFENSE**

The Amended Complaint fails to state any claim upon which relief can be granted.

### **SECOND DEFENSE**

Plaintiff's claims for damages are barred or reduced by his failure to mitigate his alleged damages by using reasonable diligence to obtain subsequent employment.

### **THIRD DEFENSE**

Defendant acted reasonably and in good faith at all times.

### **FOURTH DEFENSE**

Defendant's Faculty Manual, Faculty Handbook, Policies and Procedures Manual, including all policies therein, and the letter agreements referenced in Plaintiff's Amended Complaint, do not constitute binding, enforceable contracts.

### **FIFTH DEFENSE**

To the extent Defendant and Plaintiff had an enforceable contract related to Plaintiff's employment and/or tenure, Plaintiff materially breached that agreement, Defendant provided notice of such breach, and Defendant was absolved of any obligations thereunder.

### **SIXTH DEFENSE**

Each and every action taken by Defendant with respect to Plaintiff was justified by business necessity.

### **SEVENTH DEFENSE**

The unclean hands doctrine applies and prohibits Plaintiff from judgment in his favor.

### **EIGHTH DEFENSE**

Defendant did not breach any contract with Plaintiff.

### **NINTH DEFENSE**

Defendant followed its applicable policies and procedures with respect to suspending and terminating Plaintiff.

Respectfully submitted,

/s/ - Stephanie Peet

Stephanie J. Peet (PA ID: 91744)

Katharine Thomas Batista (PA ID: 312366)

**JACKSON LEWIS P.C.**

Three Parkway

1601 Cherry Street, Suite 1350

Philadelphia, PA 19102

T: (267) 319-7802

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[katharine.thomas@jacksonlewis.com](mailto:katharine.thomas@jacksonlewis.com)

*ATTORNEYS FOR DEFENDANT*

Dated: June 30, 2015

**CERTIFICATE OF SERVICE**

I, Katharine Thomas Batista, do hereby certify that on the 30<sup>th</sup> day of June, 2015, I caused a true and correct copy of Defendant's Answer to Plaintiff's Amended Complaint and Affirmative and Other Defenses to be served upon the following individuals by CM/ECF and U.S. First Class Mail:

Jonathan Z. Cohen, Esquire  
175 Strafford Avenue  
Suite 1 PMB 212  
Wayne, PA 19087

**JACKSON LEWIS P.C.**

/s/ - Katharine Thomas Batista

Katharine Thomas Batista

Attorney ID #312366

Three Parkway

1601 Cherry Street

Suite 1350

Philadelphia, PA 19102-1317

T: (267) 319-7802

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[katharine.thomas@jacksonlewis.com](mailto:katharine.thomas@jacksonlewis.com)

*ATTORNEYS FOR DEFENDANT*

# Exhibit 6



<b>EXHIBIT</b>  <b>6</b>
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## Policies and Procedures Manual: Academic Freedom



### Policy Statement

Marywood University affirms its commitment to academic freedom. In so doing, it reaffirms its commitment to the tradition of higher learning that is the heritage of both the Roman Catholic Church and the nation. It is a tradition grounded on respect for truth, social responsibility and individual rights. It is a tradition that posits freedom of inquiry, open discussion and unrestricted exchange of ideas as essential to the pursuit of knowledge.

Marywood University upholds academic freedom as a fundamental condition for research and dissemination of information. The University is a center of discourse where inquiry is encouraged and discoveries are verified and refined by the interaction of scholar with scholar. Marywood University respects the right and responsibility of its faculty and students to conduct research, to publish their findings, and to discuss ideas according to the principles, sources and methods of their academic disciplines. These principles, sources and methods, as they develop over time, are not external to their respective disciplines. The University sanctions and encourages investigation of unexplored phenomena, advancement of knowledge, and critical examination of ideas, old and new. The University accepts the responsibility of protecting both teacher and student from being forced to deny truth that has been discovered or to assert claims that have not been established in the discipline. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching material matter that has no relation to their subject.

Where the faculty is concerned, academic freedom presupposes, first of all, personal integrity in dealing with students, peers and officers of the University. Second, it presumes scholarly competence, observance of the professional standards of one's discipline, commitment to the stated mission of the University, and openness to having one's ideas and findings subjected to the judgment of one's peers. Third, faculty members have a responsibility as professional scholars to be accurate and judicious in their public statements, and respectful of the opinions and responsibilities of others.

### Related Policies

- Professional Ethics
- Evaluation of Faculty Members
- Faculty Status

### Related Committees

## Institutional Review Board for the Protection of Human Participants

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### History

12/01/79 - Reaffirmed with publication of *Faculty Manual*

07/01/93 - Introduction and postscript added

07/01/03 - "Human Subjects" changed to "Human Participants"

02/19/10 - Revision approved by the President of the University as recommended by the Policy Committee of the University

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Mary T. Gardier Paterson, Esquire | Secretary of the University | [mtgpaterson@marywood.edu](mailto:mtgpaterson@marywood.edu)

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# Exhibit 7



**EXHIBIT****7**

## **Policies and Procedures Manual: Professional Ethics**



### **Policy Statement**

The American Association of University Professors recognizes that membership in the academic profession carries with it special responsibility. The Statement on Professional Ethics that follows sets forth general standards assumed by members of the profession.

Professors, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognize the special responsibilities placed upon them. Their primary responsibility to their subject is to seek and to state the truth as they see it. To this end, professors devote their energies to developing and improving their scholarly competence. They accept the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. They practice intellectual honesty. Although professors may follow subsidiary interests, these interests must never seriously hamper or compromise their freedom of inquiry.

As teachers, professors encourage the free pursuit of learning in their students. They hold before them the best scholarly and ethical standards of their discipline. Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to assure that their evaluations of students reflect each student's true merit. They respect the confidential nature of the relationship between professor and student. They avoid any exploitation, harassment, or discriminatory treatment of students. They acknowledge significant academic or scholarly assistance from them. They protect their academic freedom.

As colleagues, professors have obligations that derive from common membership in the community of scholars. Professors do not discriminate against or harass colleagues. They respect and defend the free inquiry of associates. In the exchange of criticism and ideas, professors show due respect for the opinions of others. Professors acknowledge academic debt and strive to be objective in their professional judgment of colleagues. Professors accept their share of faculty responsibilities for the governance of their institution.

As members of an academic institution, professors seek above all to be effective teachers and scholars. Although professors observe the stated regulations of the institution, provided the regulations do not contravene academic freedom, they maintain their right to criticize and seek revision. Professors give due regard to their paramount responsibilities within their institution in determining the amount and character of work done outside it. When considering the interruption or termination of their service, professors recognize the effect of their decision upon the program of the institution and give due notice of their intentions.

As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of these obligations in the light of their responsibilities to their

subject, to their students, to their profession, and to their institution. When they speak or act as private persons, they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

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## Related Policies

- Teaching Responsibility
  - Librarianship Responsibility
  - Faculty Status
- 

## History

07/01/89 - Reaffirmed with publication of Faculty Manual

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Mary T. Gardier Paterson, Esquire | Secretary of the University | [mtgpaterson@marywood.edu](mailto:mtgpaterson@marywood.edu)

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# Exhibit 8



**EXHIBIT**  
**8**

## **President's Page: Marywood University's Goals & Objectives**

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### **Provide a values based context for university experiences.**

- A majority of students will participate in service opportunities in an on-going way.
- Students will demonstrate an understanding of the ethical dimensions of their fields of study.
- A majority of students will participate in spiritual development activities.
- Employees will demonstrate core values in the work place.

### **Foster an awareness and appreciation of the pluralistic nature of contemporary society.**

- Graduates will choose to study or work in multicultural settings either at home or abroad.
- Students will demonstrate a deeper appreciation for cultural diversity and an understanding of global issues.
- Enrolled students will travel abroad during their college years.
- Employee groups and governing bodies will reflect the pluralistic nature of contemporary society.

### **Provide a supportive and welcoming environment to a diverse academic community.**

- Students enrolled in any program will fulfill their academic goals by successfully completing their degree work.
- An increasing number of racially and culturally diverse students and employees will choose Marywood as a welcoming community.
- Students from a cross-section of socio-economic groups will enroll in each incoming class.
- Campus constituencies will express satisfaction with all campus services.

### **Prepare people for socially responsible leadership roles.**

- Students will participate in an internship or practicum experience.
- Students will demonstrate a significant level of co-curricular activities.
- Students will experience positive interactions with faculty members outside of class.
- Employees will serve as role models of socially responsible leaders.

**Provide a challenging instructional program.**

- Students will demonstrate achievement of cognitive skills at a level comparable to peers on standardized tests.
- Students will demonstrate the ability to think critically by engaging in research activities and by developing problem solving strategies.
- Students will demonstrate the ability to integrate the liberal arts tradition with their professional specializations.
- Students will demonstrate competence in both information literacy skills and communications skills.
- Faculty will provide evidence of ongoing scholarly activity.

**Inspire a sense of personal responsibility for responding to social justice issues.**

- Faculty, staff, and students will participate in projects designed to address social inequities.
- Students will demonstrate knowledge of both national and international social justice issues.
- Faculty, students, and staff will serve as advocates for justice in their personal and professional lives.

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President's Office | Fran Ferrese, Executive Secretary | (570) 348-6231 | [ferrese@marywood.edu](mailto:ferrese@marywood.edu)

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# Exhibit 9

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letter

## Marywood University

### Policies and Procedures Manual

4.307.3

#### Progressive Discipline

##### Policy Statement

Marywood University endorses a progressive discipline policy designed to promote resolution in a fair and orderly manner. This policy applies to faculty members with tenure or whose terms of appointment have not yet expired. Its objectives support the collegial relationships at Marywood University and are directed toward continual institutional improvement. Because the University regards disciplinary action as corrective and not punitive, the policy recognizes personal and professional problems that may be rectified by an informal educational process, as well as serious violations of professional responsibilities implicating possible recommendation for suspension or dismissal.

The policy is intended to provide an effective and flexible means of identifying problem areas, resolving complaints, and preventing repetitive incidents by prompt intervention and assistance. It is designed to accomplish these ends by a series of gradual steps involving strategies such as personal conferences, oral and written warnings, and opportunities for monitored assistance where applicable.

##### Procedures

**Commencement.** Disciplinary action may be initiated by a complaint, oral or written, which alleges violation of institutional policy, practice, procedure or other functions and responsibilities of the faculty member in pursuing his or her customary teaching and institutional role. The complaint, which may reflect an incident or incidents of misconduct or deficiency, may be communicated to the faculty member's immediate supervisor or to the appropriate dean.

**Meeting with Administrator.** The administrator receiving the complaint shall discuss the matter with the faculty member in a confidential conference. If additional information from the faculty member provides a satisfactory explanation, the decision may be to close the matter then. If, however, additional light is not shed on the allegation or an explanation is not satisfactory, the administrator will specify corrective action to be taken, and the discussion will constitute an oral warning.

**Written Warning.** If the alleged problem continues or additional complaints are received, the immediate supervisor or dean must notify the Vice President for Academic Affairs, who shall conduct a preliminary investigation concerning the merits of the complaint. A written warning to the faculty member may follow where circumstances indicate that the problem is not resolved. The written warning will become a part of the faculty member's personnel file, but will be expunged after three years if no other written warnings have occurred.

**Suspension.** The faculty member may be suspended by the Vice President for Academic Affairs at any time during the proceedings involving him or her. Suspension is justified if immediate harm to the faculty member or others is threatened by the person's continuance in the faculty position. Unless in direct violation of the law, any such suspension should be with pay.



**Special Assistance.** In those circumstances where it is evident that the faculty member is in need of special professional assistance, the Vice President for Academic Affairs may require in writing any of the following remedial actions:

- counseling and/or another type of treatment program, such as Alcoholics Anonymous or Narcotics Anonymous;
- psychological counseling and/or treatment, including out-patient treatment prescribed by a duly credentialed and qualified professional;
- peer faculty monitoring to assist in resolving work-related performance problems;
- a specified number of periodic conferences with the faculty member's Dean to assist in resolving administrative or institutional problems.

Special professional assistance will be for a specific period of time. Where the assistance necessitates in-patient treatment or time away from teaching, that temporary time-off shall be with pay. During the period of assistance, the faculty member shall communicate weekly or at other intervals specified by the Vice President for Academic Affairs, who shall monitor the faculty member's progress to determine when and if the special assistance has achieved its objective. Part of this monitoring function may involve the faculty member providing summary statements from treatment providers regarding compliance and prognosis. If the faculty member has refused to participate, or the remedial objective has not been reached during the specified period of time, a recommendation to terminate employment may be made to the President of the University.

#### ***Dismissal***

If remedial action(s) taken during the suspension does not sufficiently resolve the issues that lead to the suspension, the university may move towards dismissal of the faculty member.

#### ***Ad Hoc Faculty Committee***

Faculty members have the right to convene an ad hoc committee in order to appeal either a decision to suspend the faculty member or a decision to dismiss the faculty member.

- Having received a written recommendation for either suspension or dismissal from the Vice President for Academic Affairs, the President of the University sends a written communication to the faculty member, stating with reasonable particularity the basis for suspension or dismissal and offering, if requested by the faculty member within 10 days, to convene a tenured faculty ad hoc committee to consider the matter, to render confidential advice, and thereby to effect a remedy if possible.
- Should the faculty member request a review by an ad hoc committee, it shall consist of three members selected in the following order: (a) one tenured faculty member selected by the person seeking assistance, and (2) two tenured faculty members selected by the Executive Council of the Faculty Senate. The choice of members should be on the basis of their objectivity and competence and of the regard in which they are held in the academic community. The President of the University or his/her delegate has the option of attending the meetings of the Committee. Should a faculty member request that such a committee be convened twice (i.e., once for suspension and once for dismissal), the membership of the committee may be similar or different, a determination which is made by the President of the University in consultation with the faculty member and the Vice



President for Academic Affairs. Normally the committee would make its recommendation within 30 days of being convened.

- The Committee elects its own Chair, who sends the opinion of the committee in writing to the President of the University, copied to the faculty member and to the Vice President for Academic Affairs. If the opinion of the Faculty Committee is that the matter is successfully resolved or that there is no merit to the complaint, a recommendation shall be made to discontinue proceedings. If the problem has not been corrected and reason still exists to question the fitness of the faculty member, the recommendation shall be to either continue a suspension or initiate a formal action toward dismissal.

**Publicity.** Public statements by the faculty member or others about possible or actual termination of employment should be avoided.

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#### **Related Policies**

- 4.302.1 -- Contractual Agreements with Faculty
- 4.305.3 -- Tenure
- 4.307.2 -- Non-reappointment of Faculty Member

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#### **History of Policy No. 4.307.3 -- Progressive Discipline**

- 07/01/89 -- Reaffirmed with publication of Faculty Manual
- 12/12/97 -- Addition of informal process approved by the President
- 07/01/03 -- Editorial changes made to reflect academic restructuring
- 10/12/11 -- Revision approved by the President of the University as recommend by the Policy Committee of the University

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#### **MARYWOOD UNIVERSITY POLICIES AND PROCEDURES MANUAL**

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Secretary of the University  
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# Exhibit 10

## Marywood University

### Policies and Procedures Manual

4.312.1

### Faculty Grievances and Appeals

As an institution of higher education, Marywood University brings together a faculty, administration, and governing board united in a common bond of academic purpose. Essential to the fulfillment of this purpose is a mutual recognition of institutional integrity and individual human rights, along with an understanding of the respective roles of the several entities which constitute this educational organization.

Circumstances may arise at times, however, wherein a grievant--full-time, part-time, or pro-rata--may question decisions which affect his/her professional role in the institution. To assist in the resolution of these matters, a series of guidelines for grievances is herein set forth.

#### Definitions

**Grievance:** A grievance refers to any disagreement between two parties. A grievance identifies a complaint one party has against another party for some alleged wrongful action on the part of the second party.

**Grievant:** A Grievant initiates a grievance.

#### Types of Issues That Can Be Grieved

It is understood that procedural rather than substantive factors provide appropriate areas of review, and the Faculty Grievance Committee will not attempt to substitute its judgment for that of the decision-maker(s) involved in the case.

Thus, the Faculty Grievance Committee will hear grievances concerning:

- 1) Allegations of violation of academic freedom resulting in: denial of tenure, promotion, or sabbatical leave; non-reappointment.
- 2) Allegations of impermissible discrimination. Tenured and non-tenured faculty are protected against illegal or unconstitutional discrimination, or on any basis not relevant to job performance, and includes, but is not limited to, race, sex, religion, national origin, age, disability, marital status, or sexual orientation
- 3) Allegations of inadequate consideration resulting in: denial of tenure, promotion, or sabbatical leave; non-reappointment; or termination of employment due to retrenchment.
- 4) Allegations of violations of procedures used in rendering decisions in numbers 1 and 2 above as set forth in Chapter 2 of the *Faculty Handbook*.

Procedures regarding dismissal, suspension, and sanctions of faculty members are in the Progressive Discipline policy.

Should a grievant allege cause for grievance in any matter not identified in the above guidelines, the grievant may consult the Faculty Grievance Committee. In such circumstances, the Committee's first decision is whether the complaint is appropriate and sufficiently serious to merit consideration.

#### **Persons Against Whom Grievances May be Directed**

Fundamentally, a grievance may arise from an allegation of improper implementation of a procedure or process leading to a decision. The person(s) or body who perform(s) that procedure or process is (are) the subject(s) of the grievance. Thus, a grievant may direct a grievance against the person(s) or body responsible for the decision identified herein.

The decisions or actions of the Faculty Grievance Committee or Ad Hoc Hearing Committee may not themselves be grieved.

#### **Informal Procedure**

- 1) A member of the faculty must initially discuss a complaint with the person or body responsible for the action to which the grievant takes exception in order to determine if a resolution is possible.
- 2) A complaint must be presented within (10) calendar days of the occurrence or discovery of the alleged violation.
- 3) No grievance may be filed without the initiation of this informal complaint procedure.
- 4) If the grievance still exists after step one the grievant initiates a consultation with the Vice President for Academic Affairs in order to try to resolve the matter.

#### **Formal Procedure for Filing a Grievance**

- 1) The Faculty Grievance Committee is convened.

#### **Faculty Grievance Committee**

The Faculty Grievance Committee consisting of three tenured faculty members and two alternates (also tenured) is specifically charged with responsibility for resolving matters of grievance and appeal. The Faculty Senate conducts the election of this committee. Faculty currently serving on the Rank and Tenure Committee or the Faculty Development Committee are not eligible for election to this committee.

The term of each member extends for three years, with one person replaced each year. An alternate will be identified at each election. Any member of the Grievance Committee who has had any prior involvement in a case under consideration must recuse him/herself. The Grievance Committee shall annually elect a chair-elect who will succeed the Chair.

### Grievance Process

The grievant may consult the President of Faculty Senate for assistance in contacting the Faculty Grievance Committee Chair. The Chair should be provided with a written statement setting forth, in detail, the nature of the grievance or appeal and identifying the person(s) or body against whom the grievance or appeal is directed; this document may also include a proposal for resolving the issue. A grievance must be filed within thirty (30) calendar days of the occurrence or discovery of the alleged violation but not fewer than five (5) calendar days after the initiation of the informal complaint.

In considering the grievance or appeal, the Faculty Grievance Committee will take the following steps:

- 1) The Committee notifies the decision maker(s) that a grievance has been filed.
- 2) The Grievance Committee requests from the grievant written information regarding the issues. The Grievance Committee also requests from the decision maker(s) written statements describing the basis for the decision being appealed or grieved, as well as any attempts to settle the matter informally. This information shall be held in confidence by the Grievance Committee. At this point in the process, the information gathered is solely for review by the Committee and is not to be shared with either party involved.
- 3) At any point, the Grievance Committee may request additional information in writing from the grievant and from the decision-maker(s).
- 4) If after completing the above steps, the Committee determines that the grievance is improper or unsubstantial, or that sufficient time had not yet been allowed for its normal resolution, or that there is no evidence of improper action on the part of the decision maker(s) which would constitute a legitimate grievance, the Committee will communicate this determination to the grievant and the decision maker(s).
- 5) If the Grievance Committee determines that there was inadequate consideration or violation of procedures (see No. 3 and 4 under Types of Issues Which Can Be Grieved above), the Committee will return the case to the decision maker for reconsideration.
- 6) If the grievance is deemed appropriate for mediation, the Chair will appoint a Mediator from the University. The Mediator does not represent either party. Any party may object to the Mediator on the grounds of actual or apparent bias or conflict of interest and submit such objections to the Chair in writing. The Chair will review the objections and may replace the mediator.
- 7) The Offices of the Vice President for Academic Affairs or Human Resources may be consulted by the Mediator on mediation procedure or other matters involved in the grievance.

- 8) The Mediator shall try to resolve the grievance within thirty (30) calendar days of formal submission to the chair. With the consent of both parties, the period of mediation may be extended for a short period of time. If the grievance is not resolved within the thirty (30) calendar days, the mediator will advise the chair of the committee in writing that the issue has not been resolved. If a mutually accepted agreement is reached, this will be communicated to the chair of the committee.
- 9) Grievances not appropriate for mediation or grievances not resolved through mediation shall be referred to the Ad Hoc Hearing Committee. All evidence collected will be passed on to the Ad Hoc Hearing Committee.
- 10) If the Faculty Grievance Committee recommends a formal hearing, in cases of violation of academic freedom or impermissible discrimination, an Ad Hoc Hearing Committee will be created to conduct a formal investigation and to arrive at a recommendation for resolving the issue.
- 11) The Grievance Committee will make a summary report of its activities at the end of each academic year to the Faculty Senate. No details relevant to the privacy of the participants in any cases will be included in this report.

#### **Ad Hoc Hearing Committee**

The Ad Hoc Hearing Committee shall consist of three members, selected by the Faculty Senate Executive Council, from a standing committee of fifteen tenured Faculty Members elected for one-year terms by the faculty at large. The Faculty Senate conducts the election of this committee.

Each party shall have two challenges without stated cause regarding membership of the Ad Hoc Hearing Committee. No member of the Ad Hoc Hearing Committee shall have had any prior involvement in the case.

If the three-person Ad Hoc Hearing Committee cannot be chosen from the fifteen members of the standing committee, the Executive Council of the Faculty Senate is empowered to conduct a special election to obtain fifteen additional members with terms of one year.

The Ad Hoc Hearing Committee must select a chairperson.

#### **Ad Hoc Hearing Procedures**

- 1) The Ad Hoc Hearing Committee is empowered to gather information and documents specific to the case of the Grievant, conduct interviews, hold a hearing and take actions as are necessary to investigate the grievance to the extent that the law and University policy permit. The Ad Hoc Hearing Committee will provide recommendations in writing forty (40) calendar days from the date of its official appointment.
- 2) All Hearings are closed to anyone other than the parties and their advisors, members of the Ad Hoc Hearing Committee, and any witnesses invited to testify by the Committee. The hearing may be audio or video recorded and a written record will be maintained. The

hearing is not a legal proceeding. At the beginning of the hearing, all procedures will be made known to the parties, and all information will be kept confidential.

- 3) Each party to the grievance may have one advisor during the hearing. The advisor may not participate in the hearing.
- 4) Strict rules of legal evidence will not be binding upon the Ad Hoc Hearing Committee and evidence of probative value in defining issues may be admitted.
- 5) The hearing record will be used exclusively as the basis for findings of fact and for arriving at a decision.
- 6) Upon reaching a decision on the issue and a recommendation for action, the Ad Hoc Hearing Committee will provide a summary written report to the petitioner, the person(s) named in the grievance, and the appropriate administrative officer and the President.
- 7) After receiving the recommendation of the Ad Hoc Hearing Committee, the appropriate administrative officer will review the recommendation and notify the Ad Hoc Hearing Committee and petitioner whether the recommendation has been accepted. If the recommendation of the Ad Hoc Hearing Committee is not accepted by the appropriate administrative officer, the administrative officer will review it with the Ad Hoc Hearing Committee.
- 8) No details relevant to the privacy of the participants in the case will be included in the notice from the Hearing Committee. Public statements and publicity about the case by the participants will be avoided until the proceedings have been completed, including consideration by the President

#### **Action by the President of the University**

Following the recommendation of the Ad Hoc Hearing Committee, should the petitioner desire further consideration of the issue beyond the immediate administrative channels of the University, the President may be requested, within twenty calendar days, to review the case.

This review will be based on the record from the committee hearing and may provide opportunity for argument, oral or written, or both, by the principals. Then the President will then make the final decision.

#### **Responsibility for Expenses Incurred in Grievance and Appeal**

Expenses incurred by the grievant are the responsibility of the individual. These include, but are not limited to, the following:

- Cost of an advisor.
- Travel expenses for advisor, witnesses, or others engaged by petitioner.
- Cost of preparing any documents and copies thereof.

#### **Withdrawal of a Grievance**

The grievance can be withdrawn at any point in the process.

### **Non-Retaliation**

Grievants will not be adversely affected for exercising their right to file a grievance, regardless of outcome.

Grievants will not be subject to adverse consequences for either initiating a grievance or in presenting evidence on behalf of a grievant. Anyone who violates this mandate can be subject to disciplinary action, up to and including dismissal.

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### **Related Policies**

- 4.300.2- Faculty Senate
- 4.304.1 - Evaluation of Faculty
- 4.305.1 - Promotion of Faculty
- 4.305.3 - Tenure
- 4.307.2 - Non-reappointment of Faculty Member
- 4.307.3 - Progressive Discipline
- 4.307.4 - Retrenchment of Faculty
- 4.308.1 - Academic Freedom
- 4.309.2 - Sabbatical Leave
- 5.350.4 - Complaint Procedures for Non-faculty Employees

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### **History of Policy No. 4.312.1 – Faculty Grievances and Appeals**

- 10/02/92 – Proposal returned to committee of Faculty Senate by College Committee on Policy
- 11/13/92 – Proposed policy dated 3/13/92, as amended, recommended by College Committee on Policy to the President
- 04/26/93 – Presidential approval affirmed with publication of the President's Memo
- 07/01/93 – Reaffirmed with publication of the Faculty Manual 2.16
- 07/01/95 – Reaffirmed with publication of the Faculty Manual 2.16
- 03/20/98 - Revision proposed by Faculty Senate approved by the President of the University as recommended by the Policy Committee of the University
- 04/29/11 – Revision approved by the President of the University as recommended by the Policy Committee of the University.

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### **MARYWOOD UNIVERSITY POLICIES AND PROCEDURES MANUAL**

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Secretary of the University and General Counsel  
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# Exhibit 11

## **Policies and Procedures Manual: Violent Acts and Threats**

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### **Policy Statement**

Marywood University is committed to maintaining an environment that avoids exposure of staff, students, and visitors to foreseeable risks and prevents unnecessary damage to University property. If violent acts occur or threats of violence are perceived on campus or on other property controlled by the University, decisive action will be taken immediately to limit the potential for further development.

The Senior Director of Safety, Security and Environmental Compliance is responsible for ensuring that federal and state laws regarding crimes and offenses and University regulations related to a safe environment are enforced. She/he has the authority to determine whether circumstances surrounding the behavior constitute a credible threat or act of violence, and to inform law enforcement authorities in the case of an alleged violation of public law. Calls to 911 by others in obvious emergency situations must be reported to the Chief of Campus Safety and the Senior Director of Safety, Security and Environmental Compliance as soon as possible.

A Marywood University student, faculty, or staff member in violation of this policy will be subject to University disciplinary policies and procedures up to and including termination.

### **Definitions**

For purposes of this policy, threats and acts of violence include but are not limited to

- Repeatedly swearing or using abusive or offensive language toward others;
- Intentionally damaging property;
- Verbalizing a wish or intent to hurt others;
- Sending aggressive or threatening written, verbal, electronic, or visual communications;
- Engaging in felony property damage;
- Engaging in aggravated assault;
- Possession, whether open or concealed, storage in or on personal or University property, delivery, transportation, use, sale, purchase or receipt of a weapon on University property.

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### **Procedures**

In the event of an act or threat of one that appears to be violent, the Chief of Campus Safety is to be notified as soon as possible. Threatening behavior is complex, and it is not expected that students, faculty, or staff will be experts in assessing it. If the Chief of Campus Safety is not available, the Director of Safety, Security and Environmental Compliance shall be notified.

The Emergency Response Plan and Personnel Manual for the Campus Safety Department are maintained in the Office of Campus Safety.

## Related Policies

- [Safe University Environment](#)
- [Drug-Free Workplace](#)
- [Civil Rights Policy](#)
- [Complaint Procedures for Administrators and Staff](#)
- [Civil Rights Complaint Procedures](#)
- [Institutional Property Policy](#)
- [Faculty Grievances and Appeals](#)

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## History

12/07/01 - Approved by the President of the University as recommended by the University Committee on Policy

01/30/06 - Cyclical review approved

04/29/11 - Revision approved by the President of the University as recommended by The Policy Committee of the University

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# Exhibit 12

## Marywood University Policy & Procedure Information

EXHIBIT  
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### Institutional Property Policy

#### Policy Statement

Employees are expected to handle all Marywood University property with respect and care. They are prohibited from using Marywood University property for unauthorized personal use, and from stealing or destroying it.

To protect the Marywood community and the University from theft, Marywood University reserves the right to search employees and their personal property when there is reason to believe that such search may indicate whether the law or University policy is being violated. The University will exercise discretion in determining who will perform searches.

Marywood University also reserves the right to conduct unannounced searches of University facilities and property, e.g., University vehicles, desks, file cabinets, lockers, etc. Searches of University facilities and property, including University property in the possession of the employee, can be conducted at any time with the prior approval of an executive officer or his or her designee.

Employees are expected to cooperate in the conducting of all such searches.

Violations will be dealt with under the *Code of Conduct for Non-faculty Employees* policy or the *Progressive Discipline* policy for faculty, and may include warnings, suspension, termination, and/or legal prosecution.

Upon termination of employment, all Marywood University property must be returned to the University.

Marywood University is not responsible for personal property that employees bring to work.

#### Definitions

The following list, although not exhaustive, is illustrative of what is considered to be Marywood University property when purchased by the University: infrastructure; furniture and office furnishings; office, lab, studio, or video equipment; tools; files; computers and attached peripherals; software, systems information; phones; data stored on Marywood University computers or phones; books; books and audio and visual tapes, records, and discs; and any other intellectual property owned or co-owned by Marywood University.

#### Related Policies

- [Conditions of Computer Use](#)
- [Printing Services](#)

#### Related Committees

#### History

04/07/00 - Approved by the President of the University as recommended by the Policy Committee of the University

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# Exhibit 13

## Marywood University Policy & Procedure Information

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## Deadly Weapons and Fireworks

### Policy Statement

Deadly weapons and fireworks may not be brought onto property owned or controlled by Marywood University. This prohibition is a proactive step toward reducing the risk of bodily injury or death due to intentional, accidental, inept or improper use. It applies equally to those carried by persons with a government-issued permit.

The policy regarding weapons does not apply to duly appointed/sworn law enforcement officers or members of the United States Armed Forces when on duty.

There may be activities such as physical fitness, theatrical productions, displays, trainings or educational workshops that may appear to violate the letter of the law but not the intent of this policy. In such cases, written approval from the Senior Director of Safety, Security and Environmental Compliance is required before that activity takes place.

A Marywood University student, faculty or staff member in violation of this policy will be subject to University disciplinary policies and procedures up to and including termination.

### Definitions

For purposes of this policy, reference Commonwealth of Pennsylvania law.

Deadly weapons are any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or serious bodily injury, or any other device or instrumentality that, in the manner in which it is used or intended to be used, is calculated or likely to produce death or serious bodily injury.

Fireworks are any combustible or explosive composition or any article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation.

### Procedures

A person who is found to violate this policy may be required by the Chief of Campus Safety or Campus Safety Officer to remove him/herself and the weapon immediately from University property. Whether the person is asked to leave the property or not, the Chief will decide if circumstances surrounding the incident require notification to local law enforcement officials. Regardless, the Senior Director of Safety, Security and Environmental Compliance will be notified.

### Related Policies

- [Violent Acts and Threats](#)

### Related Committees

### History

12/07/01 - Approved by the President of the University as recommended by the Policy Committee of the University

01/27/06 - Cyclical review approved

04/29/11 - Revision approved by the President of the University as recommended by the Policy Committee of the University

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## Marywood University Policy & Procedure Information

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## Progressive Discipline

### Policy Statement

Marywood University endorses a progressive discipline policy designed to promote resolution in a fair and orderly manner. This policy applies to faculty members with tenure or whose terms of appointment have not yet expired. Its objectives support the collegial relationships at Marywood University and are directed toward continual institutional improvement. The primary goal of the progressive discipline policy is to recognize and resolve satisfactorily personal and professional problems that may be rectified through an informal educational process and to forestall their escalation into formal disciplinary action. However, the policy also covers the process governing serious violations of professional responsibilities that may lead to recommendation for suspension or dismissal.

The policy is intended to provide an effective and flexible means of identifying problem areas, resolving complaints, and preventing repetitive incidents by prompt intervention and assistance. It is designed to accomplish these ends by a series of gradual steps involving strategies such as personal conferences, oral and written warnings, and opportunities for monitored assistance where applicable.

Progressive discipline, however, is not guaranteed in every instance. In certain rare and extreme cases, the President has the authority to initiate procedures for suspension or dismissal of a tenured faculty member without that person first undergoing progressive discipline. However, the faculty member retains the right to keep working until the full procedures are completed as outlined below and in the Faculty Grievance Policy.

### Definitions

**Faculty Grievance Committee:** a committee elected by the faculty according to procedures outlined in the Faculty Grievance Policy. Their job is to review faculty grievances, including those that may arise in response to disciplinary action, such as suspension and dismissal. For more information about their selection and procedures, see the Faculty Grievance Policy.

**Dismissal:** The discharge of a faculty member from employment at Marywood University.

**Progressive Discipline:** a course of action tailored to each individual circumstance designed for the purpose of resolving a problem or issue with a faculty member through a series of gradual steps.

**Suspension:** The temporary barring of a faculty member from all work related to the University for a specified period of time. Unless in direct violation of the law, any such suspension will be with pay.

### Procedures

#### *Progressive Discipline*

1. **Commencement:** Disciplinary action may be initiated by a complaint, oral or written, which alleges violation of institutional policy, practice, procedure or other functions and responsibilities of the faculty member in pursuing his or her customary teaching and institutional role. The complaint, which may reflect an incident or incidents of misconduct or deficiency, may be communicated to the faculty member's immediate supervisor or to the appropriate dean.

2. **Meeting with Administrator:** The administrator receiving the complaint shall discuss the matter with the faculty member in a confidential conference. If additional information from the faculty member provides a satisfactory explanation, the decision may be to close the matter.

However, if additional light is not shed on the allegation or if the explanation proves unsatisfactory, the administrator will specify corrective action to be taken, and the discussion will constitute an oral warning.

3. **Written Warning:** If the alleged problem continues or additional complaints are received, the immediate supervisor or dean must notify the Provost, who shall conduct a preliminary investigation concerning the merits of the complaint. A written warning to the faculty member may follow where circumstances indicate that the problem is not resolved. The written warning will become a part of the faculty member's personnel file but will be expunged after three years if no other written warnings have occurred.

Should further written warnings follow, the Provost may confer with the faculty member's immediate supervisor and dean to discuss alternatives. The Provost will determine the next course of action, which might result in recommending to the President the faculty member's suspension and/or the termination of the faculty member's employment. Procedures are outlined below.

#### *Special Assistance*

1. Give written warning of unacceptable behavior.
2. The Provost may suggest any of the following remedial actions:
  - counseling and/or another type of treatment program, such as Alcoholics Anonymous or Narcotics Anonymous;
  - psychological counseling and/or treatment, including out-patient treatment prescribed by a duly credentialed and qualified professional;
  - peer faculty monitoring to assist in resolving work-related performance problems;
  - a specified number of periodic conferences with the faculty member's dean to assist in resolving administrative or institutional problems.
3. The Provost should then monitor the situation for a specified amount of time determined on a case by case basis. Where the assistance necessitates in-patient treatment or time away from teaching, that temporary time-off shall be with pay.

During the period of assistance, the faculty member shall be encouraged to communicate regularly with the Provost, who shall monitor the faculty member's progress to determine when and if the special assistance has achieved its objective. The faculty member may elect to provide summary statements from treatment providers regarding compliance and prognosis. If the faculty member has refused to participate, or the remedial objective has not been reached during the specified period of time, a recommendation to terminate employment may be made to the President of the University.

### **Grieving Progressive Discipline**

#### *Oral Warnings*

Should the faculty member disagree with the oral warnings given by the immediate supervisor, s/he may request to meet with his/her appropriate Dean or, if appropriate, the Provost to appeal the decision.

#### *Written Warnings/Discipline*

Should the faculty member disagree with a written warning or punitive action, s/he may elect to file a grievance with the Faculty Grievance Committee, following the procedures outlined in that policy, and bearing in mind that the Grievance Committee is empowered to review errors in procedure and offer the decision-maker its perspective on the issue, not to substitute its judgment for that of the decision-maker.

### **Suspension or Dismissal Procedures**

#### *Exceptions to Progressive Discipline*

In most cases, it is expected that faculty members will be entitled to the processes of progressive discipline. However, in the rare event of an egregious breach of professional discipline or illegal activity, the President may elect to initiate suspension or dismissal procedures immediately. There is no obligation for the President or Provost to suspend the faculty member before moving to dismissal procedures given severe circumstances. However, whether suspension or dismissal is contemplated, the President will meet with the faculty member to discuss the issue in question, and then, if determined to proceed, will convene the Faculty Grievance Committee to review the case at hand before proceeding according to the procedures outlined below. The faculty member must be allowed to continue to work until the process is complete.

Only in an extreme situation, narrowly limited to the event of a faculty member threatening or causing physical harm to him or herself or members of the campus community, the President or Provost may opt to suspend the faculty member from his/her assigned duties immediately. Unless in direct violation of the law, any such suspension should be with pay. The President should then initiate formal procedures as outlined.

#### *Suspension*

Should progressive discipline or special assistance result in no change in the faculty member's actions, the Provost may opt to recommend to the President the suspension of the faculty member for a specified period of time. Alternately, in rare circumstances of an egregious breach of professional discipline or illegal activity, the President may elect to consider the suspension or dismissal of a faculty member for a specified period.

If the need for suspension is determined, the President will meet with the faculty member to discuss the issue at hand. If, after that meeting, the President resolves to continue with suspension, s/he should send a written communication to the faculty member, stating with reasonable particularity the basis for suspension and offering, if requested by the faculty member within 7 (seven) days, to convene the Faculty Grievance Committee to consider the matter, to render confidential advice, and thereby to effect a remedy if possible.

If the faculty member elects not to convene the Faculty Grievance Committee within 7 (seven) days, the suspension shall stand. If s/he elects to convene the committee, the faculty member will continue to perform usual assigned duties (unless such continuation would lead to

in the public interest. The University may suspend the faculty member until the committee's findings have been published. Unless in direct violation of the law, any such suspension should be with pay.

#### *Dismissal*

Should progressive discipline or special assistance result in no change in the faculty member's actions, the Provost may opt to recommend to the President the termination of the faculty member's employment.

Before moving to termination, the President must meet with the faculty member to see if any possible remediation might occur or to see if the faculty member can provide any mitigating circumstances that might justify a less drastic course of action.

If the need for dismissal is determined, the President will send a written communication to the faculty member, stating with reasonable particularity the basis for dismissal and stating that the matter has been referred to the Faculty Grievance Committee to consider the matter, to render confidential advice, and thereby to effect a remedy if possible. The Faculty Grievance Committee Chair will immediately contact the faculty member as per the procedures outlined in the Faculty Grievance Policy.

Upon such notice, the faculty member may elect not to continue the Faculty Grievance Committee's hearing; if so, s/he should so notify the Faculty Grievance Committee and the President in writing and the dismissal shall stand.

While awaiting the Committee's findings, the faculty member will continue to perform usual assigned duties (unless such continuation would lead to immediate physical harm to the faculty member or other members of the university community).

The Faculty Grievance Committee shall follow its procedures as outlined in the Faculty Grievance Policy. Once the Committee has made its findings, the Chair will send in writing the Committee's opinion to the President of the University, copied to the faculty member and the Provost.

If the Committee's decision is that there is no merit to the complaint against the faculty member, they shall recommend discontinuing the proceedings for suspension or dismissal. If the Committee finds that reason exists to question the fitness of the faculty member, they shall recommend either to continue the suspension or dismissal proceedings.

If the President agrees with the Committee's findings, she will notify in writing the Board of Trustees and the faculty member of the findings and her decision to accept. If the President chooses to reject the Committee's findings, she will provide the Committee and the faculty member a detailed rationale in writing for her decision.

The Committee's recommendation should be taken very seriously by the President, especially in the case of a unanimous vote and clearly, logically written findings. In that case, the administration should consider very carefully the possible repercussions of rejecting the faculty Committee's findings. If the Committee were split in its vote, with both sides making compelling arguments, the President would be more justified in choosing to reject the recommendation.

Note: the Faculty Grievance Committee will only be convened twice (i.e., once for suspension and once for dismissal) in the event that progressive discipline procedures have been instituted and failed, and that a reasonable amount of time has taken place between suspension and dismissal. In this event, the membership of the Committee may be similar or different, a determination of which is made by the Faculty Grievance Committee Chair, after consultation with the Faculty Senate Executive Council. In the rarer event of a serious breach of professional discipline and/or illegal activity, if the President elects to proceed immediately with dismissal procedures (not suspension) after meeting with the faculty member, then the Faculty Grievance Committee will meet only once to appeal the dismissal.

#### *Publicity*

Public statements by the faculty member or others about possible or actual termination of employment should be avoided.

#### ***Responsibility for Expenses Incurred in Grievance and Appeal***

Expenses incurred by the grievant are the responsibility of the individual. These include, but are not limited to, the following:

- Cost of an advisor.
- Travel expenses for advisor, witnesses, or others engaged by petitioner.
- Cost of preparing any documents and copies thereof.

#### ***Non-Retaliation***

Grievants will not be adversely affected for exercising their right to file a grievance, regardless of outcome. Similarly, neither committee members nor witnesses will suffer adverse effects as a result of their participation in the process. Anyone who violates this mandate can be subject to disciplinary action, up to and including dismissal.

- Academic Workload
- [Faculty Status](#)
  - [Librarianship Responsibility](#)
  - [Teaching Responsibility](#)
  - [Tenure](#)

---

## Related Committees

---

## History

07/01/89 - Reaffirmed with publication of Faculty Manual  
12/12/97 - Addition of informal process approved by the President of the University as recommended by the Policy Committee of the University  
07/01/03 - Editorial changes made to reflect academic restructuring  
10/12/11 - Revision approved by the President of the University as recommended by the Policy Committee of the University  
05/07/14 - Revision approved by the President of the University as recommended by the Policy Committee of the University

---

Secretary of the University & General Counsel | 108 [Immaculata Hall](#)  
[570-340-6018](#) | F: 570-340-6014 | [paterson@marywood.edu](mailto:paterson@marywood.edu)

Please note, the materials presented on this website are provided for informational purposes only and may not be construed as legal advice from the Office of the Secretary of the University and General Counsel.

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[STUDENTS](#) [STAFF](#)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

---

FREDERICK F. FAGAL, JR.,

*Plaintiff,*

v.

MARYWOOD UNIVERSITY,

*Defendant.*

---

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:  
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:  
:  
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:  
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:  
:  
:

CIVIL ACTION

NO. 3:14-cv-02404-ARC

(JUDGE CAPUTO)

**SECOND DECLARATION OF FREDERICK F. FAGAL, JR.**

I, Frederick F. Fagal, Jr., declare as follows:

1. I am the Plaintiff in the above-referenced case.
2. I am making this declaration to oppose the Motion for Summary Judgment filed by Defendant Marywood University on November 21, 2016.
3. I understand that this declaration will be filed as Exhibit 15 to Plaintiff's Exhibit Set in Opposition to Defendant's Motion for Summary Judgment.
4. I have carefully read Plaintiff's Response to Statement of Material Facts in Support of Defendant's Motion for Summary Judgment ("Plaintiff's Response"). I verify the accuracy of each sentence in Plaintiff's Response in which Exhibit 15 is cited for support.

5. I have also carefully read Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment ("Plaintiff's Brief"). I verify the accuracy of each sentence in Plaintiff's Brief in which Exhibit 15 is cited for support.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 26, 2016.

Frederick F. Fagal, Jr.  
FREDERICK F. FAGAL, JR.

# Exhibit 16

**EXHIBIT  
16**

Page 1

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

- - -

FREDERICK F. FAGAL, JR.,	:	NO.
	:	3:14-cv-02404-ARC
Plaintiff,	:	
	:	
- VS -	:	
	:	
MARYWOOD UNIVERSITY,	:	
	:	
Defendant.	:	

- - -  
June 7, 2016  
- - -

Videotape Deposition of  
FREDERICK F. FAGAL, JR., taken pursuant to  
notice, was held at JACKSON LEWIS, P.C.,  
Three Parkway, 1601 Cherry Street, Suite  
1350, Philadelphia, Pennsylvania,  
commencing at 9:35 a.m. on the above date,  
before Edward J. Ruggeri, Registered  
Professional Reporter, Certified Court  
Reporter and Notary Public.

- - -

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[www.MagnaLS.com](http://www.MagnaLS.com)



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## APPEARANCES:

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 (267) 319-7802  
 Counsel for the Defendant

## ALSO PRESENT:

Patricia Dunleavy  
 Chelsea Lynch, Videographer

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(None)	

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THE VIDEOGRAPHER: We are now on the record. My name is Chelsea Lynch. I'm a videographer from Magna Legal Services. This is a video deposition of the United States District Court, Middle District of Pennsylvania.

Today's date is June 7, 2016, and the time is 9:35 a.m. This deposition is being held at 1601 Cherry Street, Suite 1350 in Philadelphia, Pennsylvania, in the matter of Frederick Fagal, Jr., versus Marywood University. The deponent is Frederick Fagal, Jr.

This deposition is being taken on behalf of the defendants, and would all counsel please identify themselves.

MR. COHEN: I'm Jonathan Cohen. I represent Plaintiff, Frederick F. Fagal, Jr.

MS. PEET: Stephanie Peet from Jackson Lewis representing Marywood

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University.

THE VIDEOGRAPHER: The court reporter is Edward Ruggeri who will now swear in the witness.

---

FREDERICK F. FAGAL, JR., after having been duly sworn by Edward J. Ruggeri, a Notary Public within and for the State of Pennsylvania, was examined and testified as follows:

---

## EXAMINATION

---

BY MS. PEET:

Q. Good morning, Mr. Fagal.

A. Good morning.

Q. We had met last week at --

A. Yes.

Q. -- Sister Munley's deposition.

Again, my name is Stephanie Peet and it's my pleasure to represent Marywood University with reference to the lawsuit that you have filed against it. We are here today to take your deposition.

3 (Pages 6 to 9)

Page 10

1 Have you ever been deposed  
2 before?

3 A. No.

4 Q. Okay.

5 Although you were at Sister  
6 Munley's deposition and did have the  
7 opportunity to see how it went, I'm still  
8 going to just discuss with you very  
9 briefly the instructions for this  
10 deposition so we make sure we're on the  
11 same page.

12 Okay?

13 A. Fine.

14 Q. As you know, we have a court  
15 reporter who is here taking down  
16 everything that we say at today's  
17 deposition. For that reason, we're going  
18 to ask that you keep your answers verbal.  
19 So while I'll understand the nodding of  
20 the head or the shrugging of the  
21 shoulders, it won't appear on the record.  
22 So your answers today do need to be  
23 verbal.

24 Do you understand that?

Page 11

1 A. Yes, I do.

2 Q. For that same reason, please  
3 allow me to ask my questions in full  
4 before you go ahead and start answering  
5 the question, and I will grant you the  
6 same courtesy.

7 Do you understand that?

8 A. Yes.

9 Q. If at any point in time I begin  
10 to ask another question and you weren't  
11 done answering the one I had already  
12 asked, please let me know. I'm sure it  
13 was just inadvertent and I'll allow you to  
14 go ahead and finish answering your  
15 question.

16 Okay?

17 A. Okay.

18 Q. If at any point in time today  
19 you don't understand a question -- I like  
20 to think I ask good questions but I can't  
21 promise you all of my questions today will  
22 be good ones. So if you don't understand  
23 the question that I asked, please let me  
24 know and I can do my best to rephrase the

Page 12

1 question. If you answer the question, I'm  
2 going to assume you understood the  
3 question I had asked you.

4 Do you understand that?

5 A. Yes, I do.

6 Q. Do you understand that you are  
7 under oath and all of your testimony needs  
8 to be truthful today?

9 A. Yes.

10 Q. While we're sitting here in a  
11 conference room in our offices, we're  
12 certainly not in the court, your testimony  
13 does have the same full effect as if we  
14 were in a court of law.

15 Do you understand that?

16 A. I do understand.

17 Q. Is there any reason today that  
18 you wouldn't be able to provide complete  
19 and truthful testimony?

20 A. No.

21 Q. Are you on any type of  
22 medication or suffering from any sort of  
23 impairment that would affect your ability  
24 to testify truthfully today?

Page 13

1 A. No.

2 Q. Is there anything that would  
3 affect your ability to remember events  
4 that happened four to five years ago?

5 A. I'll do the best I can but  
6 nothing specific to affect that.

7 Q. It's my understanding that  
8 other than a small claims court matter  
9 that you had in the 1970s, you haven't  
10 been involved in any other litigation  
11 other than the one presently pending  
12 against Marywood; is that correct?

13 A. That's correct.

14 Q. And the one in the 1970s, that  
15 was a small claims matter?

16 A. Yes, it was.

17 Q. And you were the plaintiff?

18 A. It might have been my wife  
19 involved also.

20 Q. Nonetheless, it was you and/or  
21 you and your wife were --

22 A. Correct.

23 Q. -- the plaintiffs; is that  
24 correct?

4 (Pages 10 to 13)

Page 14

1 A. Yes.  
 2 Q. What was that matter over?  
 3 A. It was about the return of a  
 4 security deposit from an apartment. We  
 5 rented it in Ithaca when I was grad  
 6 student at Cornell.  
 7 Q. Okay.  
 8 And were you successful in that  
 9 litigation?  
 10 A. No.  
 11 Q. What is your date of birth?  
 12 A. [REDACTED], 1946.  
 13 Q. Where do you currently live?  
 14 A. 17 East Lake Street in  
 15 Skaneateles, New York.  
 16 Q. How long have you lived at that  
 17 address?  
 18 A. At that address, since November  
 19 of 1987.  
 20 Q. Does your wife live at that  
 21 address with you?  
 22 A. Yes.  
 23 Q. I see that you look a little  
 24 pensive. Are you --

Page 15

1 A. I'm just wondering if it was  
 2 November of 1988 on the -- when we moved  
 3 into that house.  
 4 Q. Okay.  
 5 I didn't give you this  
 6 instruction earlier, but you did the right  
 7 thing. If at any point in time you're not  
 8 sure about something --  
 9 A. Right.  
 10 Q. -- and unless your attorney  
 11 says otherwise, no one wants you to guess  
 12 today.  
 13 A. Right.  
 14 Q. So if you are going to be  
 15 approximating, or estimating, or guessing,  
 16 just let us know that you're doing that.  
 17 Okay?  
 18 A. Right, uh-huh.  
 19 Q. One other instruction I did not  
 20 give you but it is kind of important for  
 21 you to know. This is not meant to be  
 22 torturous. If at any point in time you do  
 23 need to have a break, you need to get  
 24 water, use the restroom, whatever it is,

Page 16

1 that's perfectly fine. All I ask is that  
 2 any question that I've already asked has  
 3 been answered.  
 4 Okay?  
 5 A. Would you repeat that again?  
 6 I'm sorry.  
 7 Q. Sure.  
 8 If you need to take a break,  
 9 that's fine. Just let us know you want to  
 10 have a break.  
 11 A. Right.  
 12 Q. And we're going to have breaks  
 13 throughout the day, but if you need a  
 14 break while we're taking the deposition,  
 15 let us know. As long as any question that  
 16 I've asked has been answered and there's  
 17 no question pending on the table --  
 18 A. Yes.  
 19 Q. -- we can take a break.  
 20 A. I understand.  
 21 Q. Okay.  
 22 Who lives at this home with  
 23 you?  
 24 A. My wife, Janet.

Page 17

1 Q. Okay.  
 2 Anyone else?  
 3 A. No.  
 4 Q. Okay.  
 5 Do you have any intentions of  
 6 moving in the next one to two years?  
 7 A. No.  
 8 Q. Do you have children?  
 9 A. Yes, yes.  
 10 Q. How many?  
 11 A. One.  
 12 Q. And how old is your child?  
 13 A. 31.  
 14 Q. Is your -- son or daughter?  
 15 A. Son.  
 16 Q. Is your son financially  
 17 dependent on you?  
 18 A. No.  
 19 Q. Congratulations. That must  
 20 feel great. I would like to know that one  
 21 day.  
 22 What is your -- any e-mail  
 23 addresses that you currently use, can you  
 24 state those on the record?

5 (Pages 14 to 17)

Page 18

1 A. Yes. fffagal@yahoo.com, that's  
2 my main address, and my backup address  
3 which I use very seldom is  
4 fffagal@gmail.com.

5 Q. To the best of your abilities,  
6 how long have you had the Yahoo e-mail  
7 address?

8 A. Oh, I'll guess 2001, but that's  
9 an estimate.

10 Q. What about the Gmail address?

11 A. That'd be a little later, maybe  
12 2002, 2003, but I'm -- that's -- again,  
13 that's an estimate.

14 Q. Okay.

15 It's my -- and we're going to  
16 talk obviously about -- more about this  
17 today, but you worked at Marywood and you  
18 had a Marywood e-mail address as well; is  
19 that correct?

20 A. There were various addresses,  
21 correct.

22 Q. Okay.

23 Other than the Yahoo, the  
24 Gmail, and, when you worked at Marywood,

Page 20

1 did you attend any other educational  
2 institutions?

3 A. Yes.

4 Q. And what was that?

5 A. I went to Cornell University  
6 right after graduating from Union.

7 Q. When did you graduate Union?

8 A. 1968, June.

9 Q. And what was your degree in?

10 A. Economics.

11 Q. You said after you graduated  
12 Union, you went to Cornell University; is  
13 that correct?

14 A. Correct.

15 Q. Did you receive a degree from  
16 Cornell University?

17 A. Yes.

18 Q. And what was your degree?

19 A. The degree I received was a  
20 master's of arts in economics.

21 Q. Pardon my ignorance.

22 Is that two separate degrees or  
23 is that master's of arts and master's of  
24 economics --

Page 19

1 the Marywood e-mail address, have you had  
2 any other e-mail addresses in the past  
3 five years?

4 A. No.

5 Q. Do you use a cell phone?

6 A. Yes.

7 Q. Okay.

8 And what's your cell phone  
9 number?

10 A. Area code 315-406-8063.

11 Q. And how long have you had this  
12 number approximately?

13 A. About 15 years.

14 Q. Have you had any other cell  
15 phone numbers other than the one you just  
16 identified in the past five years?

17 A. No.

18 Q. I assume you graduated college;  
19 is that correct?

20 A. I graduated from college, yes.

21 Q. And what college did you go to?

22 A. Union College is Schenectady,  
23 New York.

24 Q. After you graduated college,

Page 21

1 A. That's --

2 Q. -- or is that one degree?

3 A. It's master of arts in  
4 economics, so it's one degree.

5 Q. And when did you receive your  
6 master's degree?

7 A. 1971.

8 Q. Did you continue your education  
9 thereafter?

10 A. Yes, I did.

11 Q. And what was that?

12 A. I went to Syracuse University.

13 Q. Did you receive any degrees  
14 from Syracuse?

15 A. Yes.

16 Q. And what was that?

17 A. I received a master of arts in  
18 education and I received a Ph.D. in social  
19 studies education.

20 Q. When did you receive the  
21 master's of arts in education from  
22 Syracuse?

23 A. That would have been in 1976.

24 Q. Would that have been the same

6 (Pages 18 to 21)

Page 22

1 time you received your Ph.D. in social  
2 studies education?

3 A. No.

4 Q. When did you receive that?

5 A. 1981.

6 Q. Other than what we've  
7 discussed, have you done any other  
8 education --

9 A. Yes.

10 Q. -- following college?

11 A. Yes.

12 Q. Okay.

13 And what's that?

14 A. I would audit, sit in on  
15 graduate courses at Syracuse. I also took  
16 an electronics course at Cayuga Community  
17 College.

18 Q. Did you receive any degrees  
19 with your electronics course?

20 A. No.

21 Q. When you said you audited  
22 graduate courses at Syracuse, did that  
23 come with a degree?

24 A. No. I already had a Ph.D.

Page 23

1 Q. When you mean you were auditing  
2 the graduate courses, what does that mean?

3 A. I believe I paid -- it was in  
4 the 1990s. I was taking some courses.  
5 Unix and the Internet was one course. I  
6 knew an econometrics professor. I sat in  
7 on an econometrics course. I can't  
8 remember exactly whether I paid tuition or  
9 a low audit fee or whether the professor  
10 just let me sit in. I can't remember that  
11 exactly.

12 Q. Okay.

13 Other than the degrees that  
14 we've already discussed, do you have any  
15 other degrees?

16 A. No.

17 Q. Okay.

18 As we sit here today, what  
19 types of subjects do you feel that you  
20 could be a professor for?

21 A. Teach introductory U.S. history  
22 based on my experience at Marywood, and  
23 based on my experience at Marywood,  
24 introductory economics courses. At

Page 24

1 Marywood I did teach for one semester a  
2 course in statistics in the math  
3 department, an introductory statistics  
4 course. That was an emergency basis fill  
5 in.

6 Q. Do you feel you'd be qualified  
7 to teach an introductory to statistics  
8 course today?

9 A. I would need to review. I  
10 couldn't start tomorrow.

11 Q. Okay.

12 But if you reviewed, do you  
13 feel that that's something that you might  
14 be able to do?

15 A. Yes.

16 Q. So we talked about U.S. --  
17 introduction to U.S. history, introduction  
18 to economics, introduction to statistics.

19 A. Yes.

20 Q. Are there any other subject  
21 matters or courses that you believe you're  
22 qualified to teach?

23 A. Marywood had a course called  
24 introduction to social science.

Page 25

1 Q. Do you feel you are qualified  
2 to teach that?

3 A. Yes.

4 Q. Okay.

5 Anything else as we sit here?

6 A. No.

7 Q. When did you first contact an  
8 attorney regarding this matter?

9 A. Well, I contacted the  
10 Foundation for Individual Rights in  
11 Education on the day I was suspended, and  
12 they do have attorneys working for them  
13 but that was not an attorney for me  
14 personally.

15 Q. The group that you just  
16 mentioned, is that also known as FIRE?

17 A. Yes.

18 Q. For today's deposition, just  
19 for ease of communication, can we refer to  
20 that group as FIRE?

21 A. Yes.

22 Q. I'm not asking for the  
23 communications that you had with the  
24 attorneys, but did you speak with any

7 (Pages 22 to 25)

Page 26

1 attorneys at FIRE?

2 A. I can't recall.

3 Q. Okay.

4 When was the first time that  
5 you remember speaking to an attorney?

6 A. It was probably Jonathan Cohen  
7 within a few days of the suspension.

8 Q. How did you know of Jonathan  
9 Cohen?

10 A. FIRE gave me his name as a  
11 possible contact.

12 Q. And you believe that would have  
13 been within a few days after your  
14 suspension of employment?

15 A. Yes.

16 Q. Did FIRE give you any other  
17 names besides Mr. Cohen?

18 A. No.

19 - - -

20 (At this time, a document was  
21 marked for identification as Exhibit  
22 Fagal-1.)

23 - - -

24 THE WITNESS: Let me just

Page 28

1 Q. Can you confirm that all of the  
2 information contained herein to the best  
3 of your knowledge is accurate and  
4 complete?

5 A. To the best of my knowledge,  
6 accurate and complete, yes.

7 - - -

8 (At this time, a document was  
9 marked for identification as Exhibit  
10 Fagal-2.)

11 - - -

12 BY MS. PEET:

13 Q. Mr. Fagal, what has been placed  
14 before you is what has been marked as  
15 Fagal Exhibit-2. These purport to be  
16 objections and answers to Defendant's  
17 first set of interrogatories to Plaintiff.

18 Do you see that?

19 A. Yes.

20 Q. Okay.

21 And do you agree that these  
22 were served on your behalf in response to  
23 interrogatories served upon you by  
24 Marywood University?

Page 27

1 think. I don't think FIRE gave me  
2 any other names. I don't believe I  
3 had to make any choices. I'm sorry.

4 BY MS. PEET:

5 Q. Is it fair to say that you  
6 don't recall speaking with any other  
7 attorneys besides Mr. Cohen?

8 A. That's correct.

9 Q. Okay.

10 What has been placed before you  
11 and marked as Fagal Exhibit-1 purports to  
12 be the Amended Complaint that was filed in  
13 the United States District Court for the  
14 Middle District of Pennsylvania.

15 Do you recognize this?

16 A. Yes.

17 Q. And is this the Amended  
18 Complaint that was filed on your behalf  
19 against Marywood University?

20 A. Yes.

21 Q. Have you had an opportunity to  
22 review this before it was filed with the  
23 court?

24 A. Yes.

Page 29

1 A. Yes.

2 Q. Did you assist in providing  
3 these answers and objections?

4 A. I did.

5 Q. To the best of your knowledge,  
6 is all of the information contained in --  
7 herein accurate and complete?

8 A. Yes.

9 Q. If I can draw your attention to  
10 what appears to be the third to the last  
11 page. The last two pages for whatever  
12 reason are blank, at least on my copy. It  
13 has oath. Turn to the next page. My  
14 apologies. No, the other way. Yes.

15 A. Yes.

16 Q. Do you see the page that says  
17 oath?

18 A. I do.

19 Q. And it says I declare under the  
20 penalty of perjury that the foregoing is  
21 true and correct.

22 Do you see that?

23 A. I do.

24 Q. Is that your signature?

8 (Pages 26 to 29)

Page 30

Page 32

1 A. Yes, it is.  
 2 Q. If you can turn to page 25 of  
 3 this document, interrogatory number 11.  
 4 Do you see that?  
 5 A. I do.  
 6 Q. It asks you to identify other  
 7 tenured professors who you believe engaged  
 8 in similar conduct to you in sending out  
 9 an e-mail to faculty containing links to  
 10 two satirical videos.  
 11 Do you see that?  
 12 A. Yes.  
 13 Q. And your answer is Laurie  
 14 McMillan, Ph.D.  
 15 Do you see that?  
 16 A. Yes.  
 17 Q. What do you believe that  
 18 Ms. McMillan did that was similar to what  
 19 you did?  
 20 A. Well, I was following  
 21 controversy on campus last fall via the  
 22 local newspaper, the Times Tribune and --  
 23 and The Wood Word, and I know that there  
 24 was some faculty concern and there was a

1 McMillan event, for lack of better words,  
 2 is based on what you've read in the  
 3 newspaper; is that correct?  
 4 A. That's correct.  
 5 Q. Are you aware if Ms. McMillan  
 6 created any satirical videos?  
 7 A. Not aware.  
 8 Q. Okay.  
 9 Are you aware if Ms. McMillan  
 10 sent around any e-mails to folks in the  
 11 Marywood community talking about Sister  
 12 Munley as Hitler?  
 13 A. No.  
 14 Q. At the protest, did  
 15 Ms. McMillan, to your knowledge, equate  
 16 Sister Anne Munley with Adolf Hitler?  
 17 A. No.  
 18 Q. The McMillan incident, that  
 19 occurred after your termination of  
 20 employment, correct?  
 21 A. Correct.  
 22 Q. And I believe you said perhaps  
 23 last year.  
 24 Would that have been 2015?

Page 31

Page 33

1 protest by faculty at -- I believe it was  
 2 one hundredth anniversary celebration, and  
 3 I believe Laurie McMillan was protesting  
 4 and carrying a sign in front of a crowd  
 5 protesting the president.  
 6 Q. Anything else?  
 7 A. No.  
 8 Q. Okay.  
 9 Do you know what was -- if  
 10 there were any words on her sign or  
 11 pictures?  
 12 A. Pardon me.  
 13 Q. Do you know if there were any  
 14 words or pictures on the sign that you  
 15 believe she was carrying?  
 16 A. There were words.  
 17 Q. Okay.  
 18 What were those words?  
 19 A. I can't recall.  
 20 Q. Do you have any firsthand  
 21 knowledge? Were you there?  
 22 A. No.  
 23 Q. So is it fair to say that all  
 24 of the knowledge that you have about the

1 A. Yes.  
 2 Q. As we sit here today, are you  
 3 aware of any tenured professor that  
 4 created satirical videos such as the ones  
 5 that you've created?  
 6 A. No.  
 7 Q. When did you first commence  
 8 employment with Marywood?  
 9 A. I might be wrong on the dates  
 10 but while I was working at Wyoming  
 11 Seminary in Wilkes-Barre, I taught a  
 12 part-time course at Marywood. It might  
 13 have been 1985 to '86 or one of those  
 14 semesters.  
 15 Q. To the best of your knowledge,  
 16 what course were you teaching during that  
 17 time frame?  
 18 A. That would have been an  
 19 introduction -- introductory -- pardon me  
 20 -- introduction to economics course.  
 21 Either -- it would have been either  
 22 probably micro or macro.  
 23 Q. We discussed earlier about  
 24 courses that you believe you're qualified

9 (Pages 30 to 33)



Page 34

1 to teach and we talked about intro to  
2 economics being one of them.

3 Do you believe that you'd be  
4 qualified to teach both intro to economics  
5 micro and macro?

6 A. Yes.

7 Q. After you taught this course in  
8 1985, 1986, did you have any other  
9 employment relationship with Marywood?

10 A. After I started full-time on a  
11 tenure track position.

12 Q. Okay.

13 And when was that?

14 A. 1987 in the fall.

15 Q. Now, when you commenced  
16 employment, fall of 1987, you were not a  
17 tenured professor at that time; is that  
18 correct?

19 A. Correct.

20 Q. But I believe it's your  
21 testimony you were on a tenure track?

22 A. Correct.

23 Q. Okay.

24 What does it mean to you to be

Page 36

1 Q. Thank you.

2 Were you in a department?

3 A. Yes.

4 Q. And what department was that?

5 A. The Department of Social  
6 Sciences.

7 Q. And how long were you in the  
8 Department of Social Sciences?

9 A. During my complete tenure at  
10 Marywood.

11 Q. Okay.

12 So until the time of your  
13 termination in 2012?

14 A. Correct.

15 Q. At some point in time, did you  
16 become a tenured professor?

17 A. Yes, I did.

18 Q. And when did that take place?

19 A. I believe that was September of  
20 1994.

21 Q. As a professor at Marywood in  
22 the Department of Social Sciences, to whom  
23 would you report? Generally, job  
24 position. I don't need the name of the

Page 35

1 a tenured professor?

2 A. It means that in a sense you  
3 have given up -- I won't say given up.  
4 You have a commitment to -- from the  
5 university to employ you as long as you  
6 have fulfilled whatever requirements exist  
7 for that university.

8 Q. Do you believe that the  
9 commitment is mutual in that the tenured  
10 professor is making commitments to the  
11 university as well as the university  
12 making commitments to the tenured  
13 professor?

14 A. Yes.

15 Q. When you commenced employment  
16 with Marywood, fall of 1987, was that a  
17 full-time position?

18 A. Yes.

19 Q. Were you in a certain  
20 department?

21 A. Let me go back. Full-time  
22 position -- usually considered a  
23 nine-month academic year, a full-time  
24 position.

Page 37

1 person yet.

2 A. The chairperson of the  
3 department.

4 Q. Would that also be known as the  
5 dean of the department?

6 A. No.

7 Q. Are those two different people,  
8 two different positions?

9 A. Yes. There is no dean of the  
10 department position.

11 Q. Okay.

12 So the professor reports to the  
13 chairperson of the department; is that  
14 correct?

15 A. Correct.

16 Q. And who does the -- to your  
17 knowledge, the chairperson of the  
18 department report to by job position?

19 A. I believe it might have  
20 depended on the structure of the college  
21 over the time, so that would be -- that  
22 answer would have different answers.

23 Q. Okay.

24 When -- from 1987 until 1994,

10 (Pages 34 to 37)

Page 38

1 who was the chairperson of the department?

2 A. That would have been Jack  
3 Barrett for all those years.

4 Q. Is he still with the  
5 university, to your knowledge?

6 A. No.

7 Q. In 1994 when you became a  
8 tenured professor, was Jack Barrett still  
9 the chairperson of the department?

10 A. Yes.

11 Q. Do you remember when Jack  
12 Barrett no longer was the chairperson of  
13 the department?

14 A. I can't recall the exact date.

15 Q. Who was the next chairperson?

16 A. I believe it was Kathleen  
17 Munley.

18 Q. To your knowledge, is there any  
19 relation between Kathleen Munley and  
20 Sister Anne Munley?

21 A. No.

22 Q. Do you know the time period in  
23 which Kathleen Munley served as the  
24 chairperson of the Department of Social

Page 40

1 A. Yes.

2 Q. Was he employed at Marywood at  
3 the time of your termination?

4 A. Yes.

5 Q. What was his position, to the  
6 best of your knowledge?

7 A. I believe his title is dean of  
8 liberal arts college.

9 Q. From an organizational  
10 structure at the time of your termination  
11 -- so I'm focussing on 2012.

12 As a tenured professor, is it  
13 fair to say that you reported to Sister  
14 Margaret Gannon?

15 A. Yes.

16 Q. Did Sister Margaret Gannon  
17 report to Michael Foley, the dean of  
18 liberal arts?

19 A. I presume she did.

20 Q. Do you know how long Michael  
21 Foley was in that position?

22 A. No.

23 Q. Can you approximate?

24 A. Six years perhaps.

Page 39

1 Sciences?

2 A. Not the exact dates.

3 Q. After Kathleen Munley, who was  
4 the chairperson?

5 A. I believe it was Sister  
6 Margaret Gannon.

7 Q. Do you recall the dates that  
8 she served as the chairperson of the  
9 department?

10 A. No.

11 Q. At some point in time, was  
12 there a different chairperson after Sister  
13 Margaret Gannon?

14 A. After I left, there was.

15 Q. Okay.

16 And who was that?

17 A. I -- Alexander Vari.

18 Q. At the time of your termination  
19 in 2012, was Sister Margaret Gannon the  
20 chairperson of the social sciences  
21 department?

22 A. Yes.

23 Q. Does the name Michael Foley  
24 ring -- familiar to you?

Page 41

1 Q. So at least since 2010?

2 A. Yes.

3 Q. Okay.

4 A. Excuse me. When I said six  
5 years, I meant six years prior to 2012.

6 Q. Okay.

7 So we're talking maybe  
8 2006-ish?

9 A. Maybe 2006-ish.

10 Q. Ish.

11 To the best of your  
12 knowledge -- again, I'm just focussing,  
13 trying to get an organizational picture.

14 So Dr. Fagal reports to Sister  
15 Margaret Gannon at the time of your  
16 termination, Sister Margaret Gannon  
17 reports to Dr. Foley.

18 Who does Dr. Foley report to?

19 A. I don't know.

20 Q. Okay.

21 Who is the ultimate boss, for  
22 lack of better words, at the university?

23 A. I presume it would be Sister  
24 Anne Munley.

11 (Pages 38 to 41)

Page 42

Page 44

1 Q. The president of the  
2 university?

3 A. The president of the  
4 university.

5 Q. So if someone doesn't have a  
6 direct dotted -- direct line reporting to  
7 the president of the university, everyone  
8 that works at the university ultimately  
9 reports to the president of the  
10 university; is that correct?

11 A. Yes, indirectly.

12 Q. Is there anyone higher on the  
13 food chain than the president of the  
14 university at Marywood?

15 A. I'm not sure.

16 Q. Can you identify anyone that's  
17 higher up than Sister Anne Munley who was  
18 president of the university at the time of  
19 your termination as we sit here today?

20 A. As a title, I might presume the  
21 president of the Sisters of the Immaculate  
22 Heart of Mary but I don't really know.

23 Q. Okay.

24 So as far as you know, Sister

1 Q. And to the best of your  
2 knowledge, the terms and conditions that  
3 are set forth in this letter, are they  
4 accurate?

5 A. Well, let me read the letter.

6 Q. Take your time.

7 ---

8 (At this time, the witness  
9 complies with request.)

10 ---

11 THE WITNESS: Okay.

12 Could you repeat the question,  
13 please?

14 BY MS. PEET:

15 Q. I sure can.

16 The -- as you can see that this  
17 Letter of Agreement sets forth some of the  
18 terms.

19 Do you see that?

20 A. Yes.

21 Q. To the best of your knowledge,  
22 are these terms accurate?

23 A. Yes.

24 Q. Okay.

Page 43

Page 45

1 Munley, the president of the university,  
2 was the boss of the university?

3 A. As far as I know, yes.

4 ---

5 (At this time, a document was  
6 marked for identification as Exhibit  
7 Fagal-3.)

8 ---

9 BY MS. PEET:

10 Q. Mr. Fagal, what has been placed  
11 before you marked as Fagal Exhibit-3 is a  
12 Letter of Agreement between you and  
13 Marywood University dated May 10, 2011.

14 Do you see that?

15 A. Yes.

16 Q. And if you look at the bottom  
17 right of this page, it has signature.

18 Is that your signature?

19 A. Yes.

20 Q. And by signing this letter,  
21 were you accepting the agreement -- the  
22 tenured faculty agreement between you and  
23 Marywood University?

24 A. Yes.

1 We discussed earlier about an  
2 incident involving Laurie McMillan.

3 To your knowledge, was she  
4 disciplined by Marywood University?

5 A. No.

6 Q. Do you know one way or the  
7 other?

8 A. No.

9 Q. I just -- sometimes a question  
10 can evoke a "no", but I'm not sure if it's  
11 no, you don't know or no, she wasn't.

12 A. I do not know if she was  
13 disciplined or not disciplined.

14 Q. And that's going to happen  
15 throughout the deposition. I'll try  
16 and --

17 A. I understand.

18 Q. -- make sure we catch those  
19 situations.

20 To your knowledge, did Marywood  
21 University have missions and core values?

22 A. Yes.

23 Q. Okay.

24 Off the top of your head, do

12 (Pages 42 to 45)

Page 46

1 you know what those core values are?

2 A. Well, I know one that they were  
3 stressing recently was respect for the  
4 individual. Another one was I believe  
5 something about stewardship of the earth.  
6 I'm a little vague on that one. That's  
7 what I can surely recall at the moment.

8 Q. Is Marywood University's  
9 mission and core values -- is that written  
10 down somewhere?

11 A. Yes.

12 Q. Is that made available to you  
13 as -- was it made available to you as a  
14 tenured professor?

15 A. Yes.

16 Q. Were the mission and core  
17 values posted anywhere around the  
18 university?

19 A. I can't recall.

20 Q. Okay.

21 And does that mean you can't  
22 recall one way or the other?

23 A. I can't recall one way or the  
24 other whether there was a posting or not.

Page 48

1 MS. PEET: Well, if you look at  
2 paragraph 14 of his Complaint, he  
3 talks about on July 1, 2010, Marywood  
4 issued an edition of its faculty  
5 handbook, and then you attach the  
6 first four pages as Exhibit-B to your  
7 Complaint -- your Amended Complaint.  
8 Pardon me.

9 BY MS. PEET:

10 Q. Is the handbook that I've just  
11 put before you the July 1, 2010, handbook  
12 that you were referencing in your Amended  
13 Complaint?

14 A. I don't know. I'm assuming  
15 that this is it though one would have to  
16 run a, you know, computer -- check some  
17 test to test whether any secret changes  
18 had been put in. Do I think that any have  
19 been put in? No, I don't, but I cannot  
20 testify as to whether this is in fact it.

21 Q. Okay.

22 The July 1, 2010, handbook that  
23 you reference in your Amended Complaint  
24 and what I purport is in front of you as

Page 47

1 Q. Did you ever hear anyone at the  
2 university discuss the missions or core  
3 values?

4 A. Yes.

5 - - -

6 (At this time, a document was  
7 marked for identification as Exhibit  
8 Fagal-4.)

9 - - -

10 BY MS. PEET:

11 Q. Now, Dr. Fagal, I put before  
12 you a rather sizable document. The good  
13 news is I'm not asking any questions about  
14 it specifically or really asking you to go  
15 through it with a fine-tooth comb. All  
16 I'm going to ask you to do is to identify  
17 that this is the handbook that was in  
18 existence at the time of your termination  
19 of employment. As you can see, the  
20 handbook is dated July 1, 2010.

21 MR. COHEN: I'm going to have  
22 to object. There's no way he can  
23 know whether it's the same handbook.  
24 This is like 200 pages.

Page 49

1 Exhibit-4, do you have any reason to  
2 dispute that it applied to you as a  
3 tenured professor at Marywood?

4 A. No.

5 Q. So is it fair to say that as a  
6 tenured professor at Marywood, you had to  
7 comply with the policies and procedures  
8 contained in the handbook?

9 MR. COHEN: Objection, legal  
10 conclusion. You can answer.

11 THE WITNESS: To the extent  
12 that they were clear and not vague,  
13 yes.

14 BY MS. PEET:

15 Q. Are there any policies that you  
16 sought clarification because you believed  
17 they were vague?

18 A. When?

19 Q. During your employment.

20 A. Yes.

21 Q. Okay.

22 And what policies do you  
23 believe that you sought clarification  
24 because they were vague?

13 (Pages 46 to 49)

Page 50

1 A. I remember asking Dean Torell  
2 some questions about what was okay or not  
3 okay to do.

4 Q. You asked Dean Torell what was  
5 okay and not okay with reference to what?

6 A. About postings on my office  
7 door, news stories and things like that.

8 Q. Other than asking Dean Torell  
9 about what you can and cannot do with  
10 postings on your office door, any other  
11 policies that you thought were vague for  
12 which you sought clarification?

13 A. No.

14 Q. Okay.

15 Did Dean Torell provide a  
16 response to you --

17 A. No.

18 Q. -- about what you can or cannot  
19 do with postings on your office door?

20 A. He did not reply.

21 Q. When you say he did not reply,  
22 is it fair to say that you sent him an  
23 e-mail?

24 A. Yes.

Page 51

1 Q. Did you follow up with Dean  
2 Torell to nudge him to respond?

3 A. No.

4 Q. Did you seek clarification from  
5 anyone else at Marywood other than Dean  
6 Torell on this issue?

7 A. I can't recall.

8 Q. To the best of your  
9 recollection, other than e-mailing Dean  
10 Torell once, did you reach out to Dean  
11 Torell in any other way to seek  
12 clarification on this issue?

13 A. I can't recall.

14 Q. November of 2011, it's my  
15 understanding that you invited a speaker  
16 from FIRE to speak at the campus; is that  
17 correct?

18 A. I invited a speaker to come to  
19 my class which is held on campus, so yes.

20 Q. And what class was that at the  
21 time?

22 A. Introduction to social science.

23 Q. Was this the first time you  
24 ever had a FIRE speaker speak on your

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1 behalf either in a course or at the  
2 university generally?

3 A. No.

4 Q. Can you identify the other  
5 times in which you had a FIRE speaker come  
6 to the university?

7 A. Yes. Luke Sheehan came to  
8 speak on campus at an evening event, and I  
9 believe that might have been in 2007 plus  
10 or minus a year.

11 Q. Anyone else?

12 A. Do you mean anyone else from  
13 FIRE?

14 Q. Correct.

15 A. No.

16 Q. What was your role in getting  
17 Luke Sheehan to speak at Marywood?

18 A. I'm not sure what you mean by  
19 role.

20 Q. Sure.

21 Did you initiate the -- Luke  
22 Sheehan to speak at Marywood?

23 A. Luke. I'm sorry. Good. Luke  
24 Sheehan. I was thinking of -- I can't

Page 53

1 recall who initiated it.

2 Q. Is it possible it was you?

3 A. It's possible it was me.

4 Q. What was Mr. Sheehan's what did  
5 he speak about at Marywood?

6 A. Something to do with free  
7 speech on college campuses around the  
8 United States.

9 Q. Did Mr. Sheehan in fact speak  
10 at Marywood University?

11 A. Yes, he did.

12 Q. To the best of your  
13 recollection, were posters hung with  
14 reference to Mr. Sheehan's speaking  
15 engagement?

16 A. I can't recall exactly. Could  
17 have happened.

18 Q. Do you know if there was an  
19 attendance prize for attending the --  
20 Mr. Sheehan's speaking engagement?

21 A. There was no dollar attendance  
22 prize but we might have given food away,  
23 but I really can't recall the details.

24 Q. Did anyone, to your knowledge,

14 (Pages 50 to 53)

Page 54

1 tear down any posters with reference to  
2 the Mr. Sheehan speaking engagement?

3 A. No.

4 Q. In 2007, was Sister Anne Munley  
5 the president of the university?

6 A. I can't recall but I think so.

7 Q. Did anyone at Marywood  
8 University ask you to not have Mr. Sheehan  
9 speak at the university?

10 A. No.

11 Q. Did you have any issues or  
12 run-ins with anyone at Marywood  
13 administration about the Mr. Sheehan  
14 speaking engagement?

15 A. No.

16 Q. I believe I asked you if you  
17 were aware if any posters were torn down  
18 by Marywood administration with reference  
19 to Mr. Sheehan, and I believe it was your  
20 testimony that you don't know; is that  
21 correct?

22 A. My testimony is I don't know.  
23 I can't recall if there were posters, and  
24 if I can't recall there were posters, I

Page 56

1 Q. So back to November of 2011,  
2 who was the speaker that you brought from  
3 FIRE to your course?

4 A. Will Creeley.

5 Q. And what did Mr. Creeley speak  
6 about?

7 A. I believe he had a stock speech  
8 and he had four different titles for it.  
9 I believe it was pretty much the same but  
10 he would speak about free speech on  
11 college campuses and maybe thought control  
12 or -- that might have been in the title.

13 Q. So what Mr. Creeley spoke about  
14 was similar to what Mr. Sheehan had spoken  
15 about in 2007?

16 A. Yes.

17 Q. With Mr. Sheehan, did anyone at  
18 the university tell you you could not hang  
19 up posters?

20 A. No.

21 Q. Other than you initiating, are  
22 you aware of any other speaker from FIRE  
23 that spoke at the university?

24 A. I can't recall.

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1 certainly can't recall if any were torn  
2 down or not.

3 Q. Okay.

4 The -- when Mr. Sheehan spoke  
5 at the university, was it in connection  
6 with any course or class you were  
7 teaching?

8 A. No.

9 Q. Did anyone besides you help  
10 initiate and plan this speaking  
11 engagement?

12 A. Well, I was an advisor to the  
13 Republican Club, and so there were  
14 students involved with planning the event.

15 Q. Is it fair to say that  
16 Mr. Sheehan, who was a speaker from the  
17 FIRE organization, came to Marywood  
18 University, at least as part of your  
19 initiation in 2007, spoke without issue?

20 A. Mr. Sheehan spoke without  
21 issue.

22 Q. And he's connected with FIRE;  
23 is that correct?

24 A. At the time, he was.

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1 Q. To your knowledge, is Marywood  
2 University a public or private university?

3 A. Officially a private university  
4 but it does get public funds, of course.

5 Q. Did you tell anyone at the  
6 university that you wanted Will Creeley to  
7 come speak?

8 A. Yes.

9 Q. Who did you tell?

10 A. Well, I discussed with Sister  
11 Margaret Gannon having a speaker from  
12 FIRE. At what point the name Will Creeley  
13 emerged I'm not exactly sure, but I'm sure  
14 it would have come out before the event  
15 took place. I contacted -- Sister  
16 Margaret told me that there was no money  
17 and she gave me a name, cultural affairs  
18 person. I'm drawing a blank on the name  
19 now, but she said go and ask them if they  
20 have any money for speakers. When the  
21 plans were made with FIRE, I contacted  
22 Carl Oliveri and told him who was coming.  
23 I can't recall any more right now.

24 Q. When you told Sister Margaret

15 (Pages 54 to 57)

Page 58

1 that you were -- you wanted to have a  
2 speaker from FIRE come, what was her  
3 response?

4 A. I believe she -- I said  
5 something -- she might have said well,  
6 that ties into the course, right, and I  
7 said yes, it's -- you know, it has to do  
8 with the first amendment in the  
9 Constitution. It was very -- we were very  
10 low key.

11 Q. Did -- I assume she didn't tell  
12 you no, that's not possible, that can't  
13 happen, or we object?

14 A. No objections on her part.

15 Q. When she told you that she  
16 didn't believe there were money for  
17 speakers, was it there was -- to your  
18 knowledge, was it we don't have money for  
19 speakers from FIRE or we don't have money  
20 for speakers generally?

21 A. It was a question of  
22 departmental budget, no more money for  
23 speakers generally.

24 Q. How much did FIRE want in terms

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1 determine whether there was money in the  
2 budget for a speaker?

3 A. I can't recall if I e-mailed  
4 her directly or if there was another name  
5 I e-mailed, too, but I did contact that  
6 higher level.

7 Q. And what was the response, to  
8 the best of your memory?

9 A. I know I was told by someone  
10 there was no money there either.

11 Q. Okay.

12 And did you believe that to be  
13 no money in the budget for speakers  
14 generally or did you attribute that to the  
15 fact that the speaker was from FIRE?

16 A. I believe it was no money  
17 generally.

18 Q. Was the FIRE speaker something  
19 that was required by Marywood on you to  
20 have at the university?

21 A. No.

22 Q. Did you decide to proceed  
23 anyway knowing that Marywood wasn't going  
24 to be able to fund a speaker?

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1 of money for a speaking engagement?

2 A. A thousand dollars was the  
3 usual fee.

4 Q. I believe you testified that  
5 Sister Margaret Gannon suggested that you  
6 talk to someone from the cultural  
7 department about seeking funds for the --

8 A. Not a cultural department,  
9 cultural affairs. Cerda might have been  
10 the name, C-E-R-D-A. That name rings a  
11 bell but I'm not sure.

12 Q. Is Cerda affiliated with  
13 Marywood University?

14 A. She was if that was -- it was  
15 just an e-mail contact.

16 Q. Did you indeed contact Cerda to  
17 determine whether --

18 A. Yes.

19 Q. -- there was money for this  
20 speaking --

21 A. I did go --

22 Q. -- engagement?

23 A. I'm sorry. Go ahead.

24 Q. Did you indeed contact Cerda to

Page 61

1 A. Yes.

2 Q. Was that a voluntary choice  
3 that you made?

4 A. Yes.

5 Q. You said you spoke to Carl  
6 Oliveri.

7 Who is Carl?

8 A. He was the director of what I  
9 think was called the student activities --  
10 SAL -- I called it student activities.

11 Q. Can we call it student  
12 activities for the purpose of this  
13 deposition?

14 A. That would be helpful.

15 Q. Okay.

16 What did you and Mr. Oliveri  
17 speak about with reference to you wanting  
18 to have a FIRE speaker?

19 A. I wanted to hang -- get some  
20 posters to try to draw a crowd because I  
21 wanted to open the presentation, open the  
22 class to other Marywood students, and I  
23 wasn't sure. I never hung posters as a  
24 faculty member before for my class or

16 (Pages 58 to 61)

Page 62

1 anything like that, so I wasn't sure of  
2 the protocol.

3 I did know that students groups  
4 had to get permission to hang posters  
5 because I would see posters around and I  
6 would see them stamped approved by student  
7 life, or student activities, or whatever  
8 the stamp was. So I figured it couldn't  
9 do any harm to get the posters stamped by  
10 student activities.

11 Q. And is that why you went to  
12 Mr. Oliveri?

13 A. That's why I went to  
14 Mr. Oliveri, and I thought that maybe  
15 because it was -- I was trying to reach  
16 out to the broad student body that perhaps  
17 he would be able to print a few posters  
18 for me and I was going to print some  
19 others on my own.

20 Q. What was Mr. Oliveri's  
21 response?

22 A. He said okay. He said he could  
23 print -- I believe it was 12 to 15  
24 posters.

Page 63

1 Q. Did he say that there would be  
2 a fee associated with the printing of  
3 those 12 to 15 posters?

4 A. No.

5 Q. So to your understanding, for  
6 him to print those 12 to 15 posters, you  
7 would not be responsible for paying  
8 anything; is that correct?

9 A. That's correct.

10 Q. And did you want to print more  
11 posters than what Mr. Oliveri was able to  
12 print?

13 A. Yes.

14 Q. And did you in fact print more  
15 posters?

16 A. Yes.

17 Q. Was that something you  
18 voluntarily chose to do?

19 A. Yes.

20 Q. And how many more posters did  
21 you print?

22 A. I believe the number was 46.

23 Q. Where did you print these  
24 posters?

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1 A. I had the UPS Store in  
2 Skaneateles print the posters.

3 Q. The posters that you printed,  
4 were they the same posters that Carl was  
5 printing as well?

6 A. Yes. Let me clarify. FIRE --  
7 this is Thanksgiving weekend. FIRE had  
8 sent the sample poster announcing the  
9 speech, and the title, and the date, and  
10 the time and place, and Carl Oliveri said  
11 that was fine.

12 Then -- this is before the  
13 weekend of Thanksgiving weekend. Then  
14 Carl Oliveri noticed that the posters did  
15 not have contact information on them. The  
16 PDF sample that FIRE had sent to me that I  
17 sent to Carl, no contact information.  
18 Carl Oliveri told me, Fred -- he says you  
19 need to have contact information on them,  
20 an e-mail address would do. You could  
21 even handwrite it on because Carl knew  
22 that I was bringing posters.

23 And so at that point I said  
24 okay, the posters have to be modified.

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1 This is maybe Friday and Saturday of  
2 Thanksgiving weekend, and so I sent to  
3 Carl Oliveri an e-mail saying, Carl,  
4 here's a sample strip that's going to be  
5 attached to each poster, and on that strip  
6 is my e-mail address, fagal@marywood.edu,  
7 for the contact information and also on  
8 the poster was a notice for the \$50.00  
9 attendance prize drawing for a student who  
10 came to the event. And I said that those  
11 would all be attached to the posters that  
12 would be delivered for stamping first  
13 thing on Monday morning, and that was in  
14 an e-mail.

15 Q. What was Carl's response?

16 A. I don't believe I got an e-mail  
17 response from him that weekend.

18 Q. Did you go back to Carl Monday  
19 morning with the posters with the strips  
20 on it for approval?

21 A. No.

22 Q. Why not?

23 A. Because a student brought the  
24 posters over with the strips attached.

17 (Pages 62 to 65)



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1 Q. Who was that student?  
 2 A. Geri Smith and I believe  
 3 Samantha Cocoa was with her, and Ben  
 4 Harrington might have been with them also.  
 5 I'm not sure about him.  
 6 Q. Are they all students?  
 7 A. They were all students at the  
 8 time.  
 9 Q. Okay.  
 10 To your knowledge, Geri Smith  
 11 and perhaps others went to Carl on Monday  
 12 morning with the posters which included  
 13 the strip that was to be added to the  
 14 poster for approval?  
 15 A. No.  
 16 Q. Okay.  
 17 What am I missing?  
 18 A. When Geri Smith brought the  
 19 posters over, Carl -- she -- I was not  
 20 there. This is what she -- Carl Oliveri  
 21 was not there. In charge was a woman who  
 22 worked for the student activities office  
 23 and she is the one who stamped all of  
 24 those posters with the approval, and all

1 A. I do not.  
 2 Q. And this is information that  
 3 was told to you by Geri Smith, a student,  
 4 correct?  
 5 A. Yes.  
 6 Q. Okay.  
 7 A. I do know that posters were  
 8 stamped because Geri Smith brought back  
 9 some posters to give to me to hang up and  
 10 all of them were stamped.  
 11 Q. The posters that were stamped,  
 12 did they have the strip -- the additional  
 13 strip that we've just discussed on the  
 14 posters before they were stamped?  
 15 A. Yes, they did. The strip was  
 16 on the posters before they were stamped.  
 17 Q. Did you see the posters with  
 18 the strips on them before they were  
 19 stamped?  
 20 A. Yes. I made the posters. I  
 21 taped all the strips on myself.  
 22 Q. And before you taped the strips  
 23 on, were those posters stamped?  
 24 A. No.

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Page 69

1 of those posters had on them the prize  
 2 announcement and the contact information.  
 3 Q. And you don't know who that  
 4 woman is?  
 5 A. I believe her name is Katie  
 6 Aunchman but I do not know her.  
 7 Q. Do you know what her job  
 8 position is with Marywood?  
 9 A. I believe she was a graduate  
 10 student. I think she was -- I'm not sure  
 11 of her title. I was told it was advisor.  
 12 She worked for the clubs or something.  
 13 I'm not sure exactly what she worked for  
 14 at Marywood, but she worked for Marywood.  
 15 Q. Okay.  
 16 Do you know one way or the  
 17 other whether she had approval to stamp  
 18 posters?  
 19 A. I do not know.  
 20 Q. And this information about Carl  
 21 not being there and Katie putting the  
 22 stamp of approval on it, you don't have  
 23 firsthand knowledge of that; is that  
 24 correct?

1 Q. Did -- I believe you testified  
 2 -- and I'm sorry to be repetitive -- that  
 3 Sister Margaret Gannon did not tell you  
 4 that the FIRE speaker couldn't come to the  
 5 university, correct?  
 6 A. She did not tell me the FIRE  
 7 speaker could not come to the university.  
 8 Q. What about Carl Oliveri?  
 9 A. He didn't tell me anything  
 10 about the speaker.  
 11 Q. Okay.  
 12 You said the speaker was slated  
 13 for Thanksgiving weekend; is that correct?  
 14 A. Well, the speaker was slated  
 15 for November 30th, which was a Wednesday  
 16 after Thanksgiving weekend.  
 17 Q. Was the university in session  
 18 at that time?  
 19 A. Yes. November 30th the  
 20 university was in session.  
 21 Q. Who picked the date for the  
 22 speaker?  
 23 A. Dr. Jackson and I were the  
 24 co-teachers for the course and we chose

18 (Pages 66 to 69)

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1 the date. It was getting near the end of  
2 the semester and that was the most obvious  
3 date.

4 Q. Was this speaking engagement a  
5 required element of the course you were  
6 teaching?

7 A. Yes, in the sense that it was  
8 held during the class time and it was a  
9 speaker during the class.

10 Q. Was it held in the classroom  
11 itself?

12 A. No.

13 Q. Okay.

14 Where was it held?

15 A. Comerford Auditorium.

16 Q. And who selected the location?

17 A. I did.

18 Q. Did anyone at the university  
19 make any objection to holding the speaking  
20 engagement in the auditorium?

21 A. No.

22 Q. You said Dr. Jackson; is that  
23 Dr. Thomas Jackson?

24 A. Yes.

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1 Q. One class with the same  
2 students?

3 A. Correct.

4 Q. What were Dr. Jackson's  
5 thoughts on having this FIRE speaker come  
6 to campus?

7 A. We didn't have any big  
8 discussion. He thought it was a good  
9 idea.

10 Q. Okay.

11 Is it fair to say it was your  
12 idea and he supported it?

13 A. Yes.

14 Q. Did Dr. Jackson have an opinion  
15 about the posters?

16 A. I don't understand the  
17 question.

18 Q. Sure.

19 Did he have an opinion one way  
20 or the other about posting posters on the  
21 university for the speaking engagement?

22 A. I don't recall any opinion.

23 Q. Did Dr. Jackson participate in  
24 making the posters?

Page 71

1 Q. To your knowledge, is he  
2 currently a tenured professor at Marywood  
3 University?

4 A. Yes.

5 Q. You said he was a co-teacher of  
6 the course.

7 What did you mean by that?

8 A. We split the duties and the  
9 time.

10 Q. Do you and Dr. Jackson get up  
11 in front of the course and would you speak  
12 together?

13 A. Generally not.

14 Q. Okay.

15 So would it be some days  
16 Dr. Fagal would show up and teach the  
17 class and some days --

18 A. Yes.

19 Q. -- Dr. Jackson would show up  
20 and teach the class?

21 A. Yes, sorry.

22 Q. But it was one class with the  
23 same students; is that correct?

24 A. Will you repeat? Was what?

Page 73

1 A. No.

2 Q. Did Dr. Jackson participate in  
3 hanging the posters?

4 A. No.

5 Q. Was he at all involved in the  
6 poster incident, for lack of better words?

7 A. No.

8 Q. When, to your knowledge, in  
9 relation to the November 30th speaking  
10 engagement were the posters hung?

11 A. The posters were hung the  
12 morning of November 28th and a few were  
13 hung early in the afternoon of November  
14 28th.

15 Q. So prior to November 28, 2011,  
16 there were no posters hung for this event;  
17 is that correct?

18 A. That is correct.

19 Q. And these posters were hung on  
20 November 28th for a speaking engagement  
21 that was occurring on November 30th; is  
22 that correct?

23 A. Yes.

24 Q. Who hung the posters?

19 (Pages 70 to 73)

Page 74

1 A. Geri Smith hung most of the  
2 posters. Samantha Cocoa told me in an  
3 e-mail that she hung some posters. I  
4 don't know how many. And I hung some  
5 posters.

6 Q. How many posters were hung  
7 approximately generally?

8 A. I'd say 46.

9 Q. Now, you testified earlier that  
10 you made 46 posters and Carl said he would  
11 give you 12 to 15 posters?

12 A. Correct.

13 Q. Did Mr. Oliveri not give you  
14 his 12 to 15 posters?

15 A. I was not there. Geri Smith  
16 reported to me in an e-mail that -- she  
17 said there were 12 or 15 posters -- I  
18 forget the exact number -- that were not  
19 stamped, but that of course makes sense  
20 because those posters Mr. Oliveri had  
21 printed out and they were the plain PDF  
22 posters as we see from FIRE without any  
23 contact information. So he printed  
24 posters without contact information and I

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1 guess I forgot.

2 I did not provide any strips --  
3 contact or prize information strips  
4 combined to hang on those posters. So,  
5 therefore, if the person in student  
6 activities saw that there were posters but  
7 the posters did not have contact  
8 information on them, then she would  
9 understandably not stamp them approved.

10 Q. Is it fair to say that Carl  
11 told you that in order for them to be  
12 approved, they needed to have contact  
13 information on them, correct?

14 A. That is correct.

15 Q. And is it also fair to say that  
16 you were the one that needed to provide  
17 the contact information to Carl, correct,  
18 or someone on your behalf?

19 A. Yeah. If I was bringing  
20 posters to get approved, it had to have  
21 contact information, and Carl said that I  
22 could actually write it on if I wanted to.

23 Q. Okay.

24 But that was your

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1 responsibility, correct?

2 A. Yes.

3 Q. And is it fair to say that, for  
4 whatever reason, whether you forgot or  
5 whatever, you did not provide that  
6 information to Carl either by a strip or  
7 you didn't write on your contact  
8 information on those 12 to 15 posters you  
9 asked him to print out?

10 A. No.

11 Could you repeat the question?

12 Q. Sure.

13 So we've already set forth that  
14 Carl told you in order for them to get  
15 approved, they had to have contact  
16 information on them, correct?

17 A. Correct.

18 Q. We've already, I believe,  
19 solidified that Carl told you that you  
20 needed to provide the contact information.

21 You could have done it by  
22 strip, you could have written something  
23 on, but that you had to do it, correct?

24 A. He did not say that.

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1 Q. Okay.

2 A. We did not have any discussion  
3 about whether I would like him to put  
4 contact information on the strips. I did  
5 send him the sample of the strips with the  
6 prize announcement and my e-mail address  
7 and I said this is what would be on the  
8 posters that I brought in on Monday. If  
9 Carl had chosen to print out those strips  
10 himself, he could have easily done so and  
11 taped them to the posters that he printed.  
12 He chose not to do that or didn't think  
13 about it, and I didn't think about it, and  
14 that's what happened.

15 Q. Okay.

16 Do you blame Carl for not  
17 putting contact information on those  
18 posters?

19 A. No, because I believe those  
20 were only 8 and a half by 11 small  
21 posters, nothing big.

22 Q. Okay.

23 How big were the posters that  
24 you printed?

20 (Pages 74 to 77)

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1 A. I believe they were 11 by --  
2 most of them were 11 by 17, but there were  
3 some smaller ones. I can't remember the  
4 exact mix out of the 46.

5 Q. Of the 46 posters that you  
6 believe were hung, how many did you  
7 personally hang?

8 A. I probably hung seven or eight.

9 Q. Were there specific places in  
10 the university that you wanted these  
11 posters hung or were you planning on  
12 posting them throughout the university?

13 A. I'm not sure if the question is  
14 clear to me.

15 Q. Sure.

16 Where in the university were  
17 you hanging these posters?

18 A. The general idea was to hang  
19 them where students could see them and  
20 maybe be inspired to come to the  
21 presentation.

22 Q. Now, November 28th would have  
23 been a Monday, correct?

24 A. That's correct.

1 A. Most of them were torn down.

2 Q. When you say most of them, does  
3 that mean some posters were not torn down?

4 A. Yes.

5 Q. I understand this is going to  
6 require an approximation. If you can,  
7 that would be helpful.

8 Of the 46 posters, how many  
9 believe -- how many do you believe were  
10 torn down?

11 A. My approximation would be --  
12 I'll say 38.

13 Q. And where do you come up with  
14 that number?

15 A. Well, I walked around and  
16 looked -- to look for posters and I found  
17 some still hanging but not a lot, so that  
18 would be my guess. When I say 38, it  
19 could have been 34. That's a -- you know,  
20 mid-thirties type number.

21 Q. Okay.

22 When was it that you were  
23 walking around and noticed that posters --  
24 that all the posters that you believe were

Page 79

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1 Q. Would that have been the first  
2 day back at school following a  
3 Thanksgiving break for the students?

4 A. Yes.

5 Q. Other than the seven to eight  
6 posters you hung, did you ever see the  
7 other posters that Geri or perhaps  
8 Samantha hung?

9 A. I certainly saw some of them.

10 Q. Okay.  
11 Approximately how many did you  
12 see?

13 A. I'm estimating here. Including  
14 my own, 30.

15 Q. And can you identify the  
16 buildings in which you saw these posters?

17 A. I saw posters in the science  
18 building. I saw posters in the liberal  
19 arts center. I saw posters on the library  
20 door. I can't recall if I saw posters  
21 elsewhere. I might have.

22 Q. I believe it's your position  
23 that the posters were torn down; is that  
24 correct?

1 hung up were not still hanging?

2 A. Probably about 7:15 a.m.  
3 Wednesday morning.

4 Q. And that would have been  
5 November 30th?

6 A. November 30th.

7 Q. And that would have been the  
8 day of the speaking engagement?

9 A. That's correct.

10 Q. Do you have any knowledge when  
11 any posters were allegedly taken down?

12 A. I received an e-mail from Geri  
13 Smith on -- it was dated on Tuesday  
14 afternoon that she sent it around -- I'll  
15 say 1:30 p.m., more or less, and the gist  
16 of that e-mail was Professor Fagal, is the  
17 FIRE speech cancelled, and I saw that  
18 e-mail from Geri late in the afternoon,  
19 perhaps around 5:00 p.m. I wrote back and  
20 I said what do you mean, and she said  
21 well, the posters are all torn down, and I  
22 was shocked.

23 And was there another part of  
24 the question? Have I answered the

21 (Pages 78 to 81)

Page 82

1 question?

2 Q. I believe you have answered the  
3 question in full. Thank you.

4 Is that the way that you  
5 learned that posters were taken down by  
6 getting an e-mail from Geri Smith?

7 A. Yes.

8 Q. When -- you've been using the  
9 terminology throughout this litigation of  
10 torn down; is that correct?

11 A. That's correct.

12 Q. Okay.

13 When I think of torn down, I  
14 think of someone physically like tearing  
15 something off the wall.

16 A. Yes.

17 Q. Did you have any -- did you  
18 witness people taking the posters down?

19 A. No.

20 Q. Okay.

21 Do you know if in fact they  
22 were torn down or just removed from the  
23 wall?

24 A. In some cases, I saw some

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1 remnants, you know, like leftover tape or  
2 whatever just on top. So they were  
3 removed quickly at least in some cases.

4 Q. Is it fair to say that you  
5 didn't witness any posters being removed;  
6 is that correct?

7 A. I did not witness any posters  
8 being removed.

9 Q. Did Geri Smith tell you that  
10 she witnessed any posters being removed?

11 A. I don't think she did.

12 Q. Did anyone tell you they saw  
13 the posters being removed?

14 A. Not that I can recall.

15 Q. As we sit here today, do you  
16 know in fact who removed posters from the  
17 walls?

18 A. Could you rephrase that?

19 Q. Sure.

20 As we sit here today, do you  
21 know who removed posters that you believe  
22 were removed about the FIRE speaker?

23 A. I don't know individual names  
24 of who actually performed the task. I'm

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1 presuming they could have been work study  
2 students who were told to take them down  
3 but I don't know any specific person who  
4 specifically tore down posters.

5 Q. Do you know who instructed  
6 anyone to remove those posters?

7 A. I have no firsthand knowledge  
8 of who told anybody to do it, though Alan  
9 Levine did tell me that posters had been  
10 torn down.

11 Q. Did Alan Levine tell you he  
12 wanted the posters to be torn down?

13 A. Alan Levine told me when I had  
14 a meeting with him that the posters were  
15 torn down because of the prize  
16 announcement, and the way he told that to  
17 me I drew the conclusion that he approved  
18 that they were torn down because of the  
19 prize announcement.

20 Q. I believe you testified you  
21 drew a conclusion.

22 Did Alan Levine tell you one  
23 way or the other about his position --

24 A. Well, yes.

Page 85

1 Q. Let me --

2 A. I'm sorry.

3 Q. -- finish asking the question.  
4 Did Alan Levine tell you that  
5 he approved of the posters being torn  
6 down?

7 A. I will say yes.

8 Q. And what were his words?

9 A. He said that I was pandering to  
10 the students by offering prize money to  
11 come to class.

12 Q. You testified that the FIRE  
13 speaker spoke Wednesday evening, November  
14 30th; is that correct?

15 A. No.

16 Q. That the FIRE speaker was  
17 scheduled to speak Wednesday evening,  
18 November 30th?

19 A. No.

20 Q. What do I have wrong?

21 A. The FIRE speaker spoke at my  
22 2:00 p.m. class on Wednesday, November  
23 30th.

24 Q. Okay.

22 (Pages 82 to 85)

1 So the class that you normally  
2 taught was 2:00 on Wednesdays during that  
3 semester; is that correct?

4 A. That's correct.

5 Q. And as part of the class, it  
6 was required that the students attend this  
7 lecture, correct?

8 A. No.

9 Q. Did you take attendance?

10 A. No.

11 Q. Did you tell the students that  
12 it was encouraged that they attend?

13 A. Yes.

14 Q. If the students didn't attend  
15 the lecture, did that mean they missed the  
16 class that day?

17 A. Yes.

18 Q. And I believe you testified  
19 that Dr. Levine told you it was pandering  
20 to offer prize money to come to the class;  
21 is that correct?

22 A. Yes.

23 Q. You testified that Dr. Levine  
24 told you that the posters were torn down

1 being torn down and I did not think that  
2 Marywood University tore them down. I  
3 assumed it was some student who didn't  
4 like me or something about the topic tore  
5 them down. I did not assume the  
6 university tore them down.

7 So I immediately went down to  
8 the UPS Store on Tuesday, luckily before  
9 they closed, and I got not 46 posters done  
10 but maybe 20 or so and I had them printed,  
11 and I sent an e-mail to Sister Anne Munley  
12 and Carl Oliveri expressing surprise that  
13 my posters had been torn down. I said I  
14 got them reprinted and I would show up on  
15 Wednesday morning bright and early to get  
16 them hung up and could the university  
17 please send out a blast e-mail to students  
18 saying something along the lines of, gee,  
19 we had a terrible thing happen. Professor  
20 Fagal's posters were torn down. We'd like  
21 to let you know there is a presentation  
22 speech you could attend on Wednesday  
23 afternoon and wouldn't it be nice to go  
24 to, you know, counteract the tearing down

1 because of the prize announcement; is that  
2 correct?

3 A. Yes.

4 Q. Did Dr. Levine tell you that  
5 the posters were torn down because it was  
6 a FIRE speaker?

7 A. No.

8 Q. Did Dr. Levine tell you that  
9 the posters were being torn down because  
10 the speaker was going to be talking about  
11 free speech?

12 A. No.

13 Q. Did the posters actually offer  
14 prize money?

15 A. No.

16 Q. Okay.

17 Tell me why not.

18 A. Because the posters that  
19 offered the prize money were torn down.  
20 Most of them were torn down.

21 Q. So --

22 A. I --

23 Q. I'm sorry. Go ahead.

24 A. I learned about the posters

1 of the posters. So that's the e-mail I  
2 sent.

3 So I showed up on Wednesday  
4 morning with the newly-printed posters  
5 with the prize announcement on them, as  
6 had done on Monday morning, and I  
7 personally went over to the student  
8 activities office with the posters ready  
9 to get stamped and would go quickly hang  
10 them up to do the best we could at getting  
11 a crowd, and that's when I was told that,  
12 no, the prize announcement could not be on  
13 there and had to be cut off before the  
14 posters could be stamped approved.

15 Q. Okay.

16 Was it your understanding if  
17 you took that prize money off that the  
18 posters would be stamped and approved?

19 A. Yes.

20 Q. Did you take the prize money  
21 off?

22 A. Yes.

23 Q. And the posters were stamped  
24 and approved?

Page 90

1 A. Yes.  
 2 Q. And were those posters hung?  
 3 A. Yes.  
 4 Q. Were those posters torn down?  
 5 A. Some were.  
 6 Q. Do you know who did that?  
 7 A. No, I do not.  
 8 Q. Do you know if it was the  
 9 administration?  
 10 A. I do not know for sure.  
 11 Q. You'd just be speculating?  
 12 A. I could speculate.  
 13 Q. Okay.  
 14 But it would be that  
 15 speculation, you don't know?  
 16 A. I don't know.  
 17 Q. You testified earlier that  
 18 before you posted another 20 posters that  
 19 of the posters that you believe were torn  
 20 down, it was the posters with the prize  
 21 money --  
 22 A. Yes.  
 23 Q. -- is that correct?  
 24 A. Yes.

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1 Q. Posters that were not torn  
 2 down, did they have the prize money on it?  
 3 A. Yes.  
 4 Q. Okay.  
 5 So some posters with the prize  
 6 money stayed up, some posters with the  
 7 prize money were torn down?  
 8 A. Yes. Posters that remained  
 9 were mostly the small ones because I  
 10 printed some small ones that were 8 and a  
 11 half by 11. And, for example, one of the  
 12 first ones I saw hanging was outside the  
 13 -- I think the second floor men's room in  
 14 the liberal arts center on a bulletin  
 15 board with a lot of other posters,  
 16 something that would be easy to overlook  
 17 in terms if somebody had gone on a  
 18 tear-down campaign. So some posters were  
 19 not torn down. They were missed by those  
 20 who were given the task of tearing down  
 21 the posters.  
 22 Q. And it was up to you or people  
 23 that were working with you to decide where  
 24 those posters would be hung, correct? No

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1 one at the administration said these are  
 2 where you have to hang the posters,  
 3 correct?  
 4 A. Correct.  
 5 Q. You alluded to the fact that  
 6 perhaps it was a student who didn't like  
 7 you tore down the posters.  
 8 A. Well, that's mere speculation.  
 9 I had no idea.  
 10 Q. Do you know one way or the  
 11 other whether there were students that  
 12 didn't like you?  
 13 A. No, not particularly.  
 14 MR. COHEN: Stephanie, can we  
 15 take a five-minute bathroom break?  
 16 MS. PEET: Sure.  
 17 ---  
 18 THE VIDEOGRAPHER: We're now  
 19 off the record. The time is 11:04  
 20 a.m.  
 21 ---  
 22 (At this time, a short break  
 23 was taken.)  
 24 ---

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1 THE VIDEOGRAPHER: We are now  
 2 on the record. The time is 11:16  
 3 a.m.  
 4 ---  
 5 BY MS. PEET:  
 6 Q. Dr. Fagal, are you okay to  
 7 continue?  
 8 A. Yes.  
 9 Q. Just a reminder, you are still  
 10 under oath and all of the testimony you  
 11 provide needs to be complete, accurate,  
 12 and truthful.  
 13 Do you understand?  
 14 A. I understand.  
 15 Q. Okay.  
 16 Right before we took a break,  
 17 you testified that you had another 20  
 18 posters printed for the purposes of  
 19 hanging them for the speaker.  
 20 Do you remember that testimony?  
 21 A. Yes.  
 22 Q. Were those 20 posters that you  
 23 printed -- were they ultimately hung?  
 24 A. Yes.

24 (Pages 90 to 93)

Page 94

1 Q. To your knowledge, did anyone  
2 tear those down?

3 A. To my knowledge, there were  
4 posters missing that should have been  
5 hanging that day.

6 Q. Do you have any knowledge as to  
7 what happened with those posters?

8 A. I have no personal knowledge as  
9 to what happened to those posters.

10 Q. Okay.

11 As of 2:00 p.m. Wednesday,  
12 November 30th, were there posters hung at  
13 Marywood University about the advertising  
14 for the speaking engagement?

15 A. Posters had been hung prior to  
16 2:00 p.m. that day to announce the  
17 speaking engagement.

18 Q. Okay.

19 Between November 28th when the  
20 posters first were hung by you and your  
21 team until November 30, 2012 -- 2011, was  
22 there always a poster -- at least one  
23 poster hung at the university about this  
24 speaking engagement?

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1 A. I presume, yes.

2 Q. Did Mr. Creeley from FIRE come  
3 to speak?

4 A. Yes, he did.

5 Q. How long did he speak for?

6 A. Approximately 40 minutes.

7 Q. And was that the scheduled  
8 length of his presentation?

9 A. Yes. There was some discussion  
10 time afterwards, so 40 minutes is an  
11 estimate.

12 Q. Is it fair to say that no one  
13 from Marywood administration shut down the  
14 speaker?

15 A. Yes, it's fair to say that.

16 Q. Is it fair to say that no one  
17 from Marywood administration shortened the  
18 speaker's discussion?

19 A. No one from the Marywood  
20 University administration shortened the  
21 speaker's presentation or discussion.

22 Q. Did anyone from Marywood  
23 administration sensor or try to sensor  
24 what it is that he was going to discuss?

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1 A. Do you mean of knowledge I had  
2 at the time?

3 Q. I'm asking you did anyone from  
4 Marywood try and change the topic or tell  
5 Mr. Creeley he couldn't speak about  
6 specific topics?

7 A. No.

8 Q. How many people were in  
9 attendance at this speaking engagement?

10 A. Probably most of my class  
11 members, and that might have been -- I'll  
12 say -- I'm not sure what that number would  
13 have been between Dr. Jackson and myself  
14 but let me pick a number. Say -- I'll say  
15 33, and then I would say there were  
16 probably roughly 12 to 15 more people who  
17 showed up.

18 Q. The 12 to 15 additional folks  
19 that showed up, were they students?

20 A. Some were students, I believe,  
21 but I didn't know -- I don't know for  
22 sure.

23 Q. Do you know who the other  
24 people were?

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1 A. One person I noticed was Frank  
2 Falcone.

3 Q. And who is Mr. Falcone?

4 A. I think his title was -- had  
5 something to do with graduate students and  
6 he had been a student in my class some  
7 years previously, and so he showed up.

8 Q. Was he -- so I just want to  
9 make sure I understand this correctly.

10 Was he part of the faculty or  
11 administration at Marywood?

12 A. Administration.

13 Q. Okay.

14 Do you know how the 12 to 15  
15 folks that were not part of your course  
16 learned about this speaking engagement?

17 A. I do not know how they learned  
18 about the speaking engagement.

19 Q. Do you have any knowledge of  
20 anyone from Marywood administration  
21 telling students, faculty or anyone, not  
22 to attend the speaking engagement?

23 A. I have no knowledge of anything  
24 like that.

25 (Pages 94 to 97)



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Page 100

1 ---  
2 (At this time, a document was  
3 marked for identification as Exhibit  
4 Fagal-5.)  
5 ---

6 BY MS. PEET:

7 Q. What has been marked and placed  
8 before you as Fagal Exhibit-5 are  
9 documents Bates stamped DEF001447 through  
10 1475. It's my understanding that this is,  
11 for lack of better words, a chronology of  
12 events regarding the FIRE speaker that was  
13 prepared by you.

14 Is that an accurate  
15 description?

16 A. Yes.

17 Q. So is it fair to say that what  
18 has been marked as Exhibit-5 is a document  
19 you prepared that, to the best of your  
20 recollection and knowledge, put together  
21 the chronology of the events that led to  
22 the November 2011 FIRE incident, for lack  
23 of better words?

24 A. I did my best to compile this

1 administration, and so now I was thinking  
2 about perhaps going public in some way  
3 with what had happened.

4 Q. And by going public, what is it  
5 that you're referencing?

6 A. Well, at this point, I wasn't  
7 exactly sure. It could have been sending  
8 out e-mails to people. It could have been  
9 trying to say, hey, something is rotten in  
10 the state of Denmark, to quote a phrase.

11 Q. Did you ever ask to have a  
12 meeting with Sister Munley to discuss  
13 this?

14 A. No.

15 Q. If I'm doing my math right, is  
16 it fair to say that approximately 45 to 50  
17 people attended this event?

18 A. That sounds about right.

19 Q. Were you pleased with the  
20 turnout?

21 A. I wasn't displeased given the  
22 situation. In this day and age, crowds  
23 form with a lot of social media, spur of  
24 the moment type things, but I'm not a

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Page 101

1 accurately, and at the time I did.

2 Q. When did you prepare this?

3 A. According to my date here, it  
4 says December -- 12/21/2011 is the date on  
5 comment one.

6 Q. Does that seem about accurate  
7 as to when you put this together?

8 A. Yes.

9 Q. Why did you put this together?

10 A. Well, I felt I had been  
11 wronged, if you will say that -- if I can  
12 say that, by the university. I had tried  
13 to find out what happened to my posters.  
14 I inquired about the decision-making that  
15 went into tearing down the posters. I had  
16 tried to get to the bottom of what had  
17 happened.

18 Q. Were you preparing this for you  
19 or for you to give to someone else?

20 A. I was preparing this. I had  
21 tried to, as they say, go through channels  
22 and seek redress for what had happened. I  
23 got no redress for what had happened and  
24 -- although I tried to work with the

1 social media expert. But people can tweet  
2 and say, hey, what the heck, let's go to  
3 -- you know, last minute, let's go to that  
4 Fagal, you know, presentation and if one  
5 of us wins the 50 bucks, you know, we'll  
6 all buy pizza.

7 So crowds -- you can read in  
8 any of the news, they can form almost  
9 instantaneously with, you know, Facebook  
10 messages, and tweets, and Snapchats, and  
11 all these things I really don't use but  
12 the students do, and so you never know  
13 what will catch the spark.

14 So if one student sees one  
15 poster and that student is, shall we say,  
16 a tweeting ringleader, then she might be  
17 the one who by herself causes a crowd of  
18 one hundred students to come out, and if  
19 she's that one student who doesn't see  
20 that one poster, bingo, you don't get  
21 those hundred students.

22 So it's a crap shoot, shall we  
23 say, in gambling terms, and that's why the  
24 posters were important because you never

26 (Pages 98 to 101)

1 know which poster will catch which  
2 person's eye and what that person might do  
3 in this day and age with social media to  
4 gather a crowd together.

5 Q. Was Twitter popular in 2011?

6 A. I don't know but there were  
7 various instant message things going on  
8 and that's why I tried to cover whatever  
9 was going on. I don't know.

10 Q. Was Snapchat popular in 2011?

11 A. I don't know.

12 Q. Did you use social media to  
13 advertise the event?

14 A. No.

15 Q. So you were hoping other people  
16 used social media to advertise the event?

17 A. Yes. I sent an e-mail to class  
18 members, you know, telling them about the  
19 event. I think in that -- I think in that  
20 e-mail I mentioned that it was open to  
21 other people.

22 Q. Did the folks that you sent the  
23 e-mail to -- did they attend?

24 A. Most of them did. Most of the

1 Q. And you're not aware of anyone  
2 that was told they couldn't attend the  
3 event, correct?

4 A. Not aware of anyone who was  
5 told they could not attend the event.

6 Q. Have we exhausted all of the  
7 ways in which you chose to advertise the  
8 event?

9 A. (Indicating.)

10 Q. And in summary, you posted  
11 posters and you sent an e-mail out to  
12 students in your class, correct?

13 A. That's correct.

14 Q. Were you told you couldn't  
15 engage in any other ways to advertise or  
16 promote the event?

17 A. No.

18 Q. The -- I believe you testified  
19 that the posters that Mr. Oliveri printed  
20 out, which ultimately you didn't use, no  
21 one required you to pay for that, correct?

22 A. That's correct.

23 Q. The posters that you went to  
24 UPS to print out, you paid for that,

1 class members attended.

2 Q. Besides your class members, did  
3 you send an e-mail out to anyone else?

4 A. No, not that I recall.

5 Q. Did anyone tell you you  
6 couldn't?

7 A. No.

8 Q. Did anyone win the prize money?

9 A. Yes.

10 Q. Do you remember who won?

11 A. I don't recall the name.

12 Q. Was it a student?

13 A. Yes.

14 Q. Was it someone from your class?

15 A. I believe it was.

16 Q. Do you know if that person  
17 attended the speaking engagement because  
18 of the attendance prize?

19 A. I don't know.

20 Q. So whatever happened with the  
21 posters, the event still went on, correct?

22 A. Yes.

23 Q. And people attended the event?

24 A. Some people attended the event.

1 correct?

2 A. That's correct.

3 Q. Did you ever submit for  
4 reimbursement to Marywood?

5 A. No.

6 Q. Why not?

7 A. Because it was my donation to  
8 academia.

9 Q. I believe you testified earlier  
10 this morning that at some point you  
11 contacted FIRE.

12 Did you contact FIRE shortly  
13 after the event on November 30th?

14 A. Well, Will Creeley was from  
15 FIRE, of course, and he knew that poster  
16 -- he knew that day that posters had been  
17 torn down because I told him.

18 Q. Because you told him?

19 A. Uh-huh.

20 Q. Did you talk to anyone else at  
21 FIRE about the incident? And I'm calling  
22 it an incident for lack of better words.

23 A. Yes, later -- later in December  
24 at some point I contacted FIRE and

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1 explained to them how the events unfolded.

2 Q. Okay.

3 Other than what we've already  
4 discussed about the unfolding of events,  
5 is there anything else that is relevant to  
6 what happened with the speaker?

7 A. I'm not sure I understand your  
8 question.

9 Q. Sure.

10 You said you contacted FIRE  
11 sometime in December to explain to them  
12 the events that transpired.

13 Have we exhausted all of the  
14 events that transpired regarding this FIRE  
15 poster incident?

16 A. I don't know about specific  
17 events. At one point -- I'm trying to  
18 remember when. I think somebody said the  
19 posters had not been stamped approved on  
20 Monday and that's why they were torn down,  
21 and I'm trying to refresh my memory who  
22 said that but I was also told that.

23 Q. Okay.

24 Anything else that you could

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1 of Marywood administration to discuss  
2 this?

3 A. I'm not sure what you mean by  
4 outside Marywood administration.

5 Q. Well, you contacted FIRE?

6 A. Yes.

7 Q. Did you contact any other group  
8 or entity?

9 A. No.

10 Q. You said it was in December  
11 when you contacted FIRE.

12 Do you remember when that was?

13 A. I can't recall exactly.

14 Q. Do you remember with whom you  
15 spoke?

16 A. I believe I had e-mails with  
17 Peter Bonilla.

18 Q. When you contacted FIRE, was  
19 that by e-mail, phone, in person? How did  
20 you do that?

21 A. E-mail.

22 Q. So it's your testimony that you  
23 e-mailed with Peter -- probably Peter  
24 Bonilla at FIRE?

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1 think of that pertains to this speaker or  
2 poster FIRE incident that we haven't  
3 already discussed?

4 A. Not right now.

5 Q. What was FIRE's response to  
6 you?

7 A. I forget the exact response but  
8 FIRE -- I did provide FIRE with  
9 information about what had happened, and  
10 FIRE contacted Sister Anne Munley about  
11 the events.

12 Q. Why did you contact FIRE?

13 A. Well, it was their speaker  
14 whose presentation I think had been  
15 interfered with, not physically but in  
16 terms of the publicity, and FIRE's  
17 mission, as I understand it, is free  
18 speech on college campuses. And so I  
19 thought that there might be a fit where  
20 FIRE might contact Marywood and saying  
21 perhaps there's a problem here that needs  
22 looking at or fixing, so that's why FIRE  
23 would be the people to contact.

24 Q. Did you contact anyone outside

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1 A. Yes.

2 Q. Did you produce those e-mails  
3 in this litigation?

4 A. I can't recall.

5 Q. I'm going to ask that to the  
6 extent there's any e-mails that you have  
7 with Peter Bonilla or anyone at FIRE  
8 regarding the November 2011 incident that  
9 you check for those and produce those.

10 A. Yes.

11 Q. Thank you.

12 MR. COHEN: Stephanie, you're  
13 saying that there are none in the  
14 production?

15 MS. AHMAD: I would have to  
16 check.

17 MR. COHEN: Okay.

18 MS. PEET: For what it's worth,  
19 there's been a very large production  
20 and we'll talk about that, but that  
21 doesn't -- that does not ring any  
22 bells.

23 MR. COHEN: Okay.

24 MS. PEET: And if it has been

28 (Pages 106 to 109)

Page 110

1 produced, then please just let us  
2 know.

3 MR. COHEN: Okay.

4 - - -

5 (At this time, a document was  
6 marked for identification as Exhibit  
7 Fagal-6.)

8 - - -

9 THE WITNESS: It's possible I  
10 might have contacted Will Creeley at  
11 FIRE and then I might be recalling  
12 that Bonilla sent an e-mail to Sister  
13 Anne. It's possible, so...

14 BY MS. PEET:

15 Q. I recognize we're going back --

16 A. Yeah.

17 Q. -- four to five years.

18 A. Four and a half years, right.

19 Q. And that's perfectly fine. I  
20 don't expect you --

21 A. Right.

22 Q. -- to have everything committed  
23 to memory. All I am suggesting and  
24 telling you is to the extent there are any

Page 112

1 A. I can't recall.

2 Q. Do you remember making any  
3 edits, or suggestions, or comments to this  
4 letter?

5 A. No.

6 Q. Did you receive a copy of the  
7 letter after it was sent out?

8 A. I can't recall for sure but I  
9 think I received a copy.

10 Q. Did you ask for FIRE to send  
11 this letter to Sister Munley on your  
12 behalf?

13 A. I would say I didn't ask FIRE  
14 to send the letter. FIRE got the facts  
15 and then they decided to send the letter.

16 Q. The facts that FIRE received,  
17 were those the facts that you gave to  
18 FIRE?

19 A. Yes.

20 Q. Do you know if FIRE got the  
21 facts from any other source?

22 A. No.

23 Q. Did you authorize or approve  
24 this letter to be sent to President

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1 written communications which would include  
2 e-mails between you and anyone at FIRE  
3 about this incident, then they be  
4 produced --

5 A. Yes.

6 Q. -- to the extent that they have  
7 not.

8 A. Uh-huh.

9 Q. And if they have been produced,  
10 just kindly direct us to those and all is  
11 good.

12 You testified just a few  
13 moments ago that after you contacted FIRE  
14 to discuss the November 2011 incident,  
15 FIRE then contacted Sister Munley.

16 This letter that has been  
17 placed before you, is this what you mean  
18 by FIRE contacting Sister Munley?

19 A. Yes.

20 Q. Did you have any part in  
21 drafting this letter?

22 A. No.

23 Q. Did you see this letter before  
24 it was sent to President Munley?

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1 Munley?

2 A. No.

3 Q. Did Carl Oliveri tell you that  
4 Alan Levine endorsed the action of tearing  
5 down the posters?

6 A. When I met with Carl Oliveri on  
7 November 30th and I asked him what had  
8 happened -- actually, I first started  
9 saying, gee, wasn't it terrible that my  
10 posters got torn down, geez, and then he  
11 said we tore them down. I was shocked. I  
12 said -- taken aback and I said why, and  
13 then that's when he brought up, well, at  
14 Marywood we don't pay students to go to  
15 class. I shook my head and I said what.  
16 He said, well, you had the prize  
17 announcement on the posters and that can't  
18 happen, so that's why the posters were --  
19 that's why we tore down the posters.

20 That's why they were torn down,  
21 and I said well, why, and then he said  
22 well -- and I said who -- you know,  
23 basically I said who gave you the  
24 directions because I thought he was not

29 (Pages 110 to 113)

Page 114

1 the top person on the totem pole, and  
2 that's when he mentioned Alan Levine and  
3 he mentioned executive council had had a  
4 meeting and had discussed this and had  
5 approved tearing down the posters.

6 Q. Did Mr. Oliveri tell you that  
7 Dr. Levine endorsed the tearing down of  
8 the posters?

9 A. He did not use the word  
10 "endorsed". He just said that Alan Levine  
11 -- that was the name brought up and then  
12 he used the general term "executive  
13 council". So I assume that just like any  
14 organization you might be in the minority  
15 but if you're on the executive council and  
16 if you're one of five and maybe you don't  
17 agree with it but if the other four said  
18 yes, then you might go ahead with it. So  
19 you might not approve but you might still  
20 give the order. So I don't know exactly  
21 what Alan Levine thought.

22 Q. Did Carl tell you that the  
23 posters were being torn down because of  
24 the fact that the speaker was from FIRE?

Page 115

1 A. No.

2 Q. Did Carl tell you that the  
3 posters were torn down because the speaker  
4 was going to be talking about free speech  
5 at a university?

6 A. No.

7 Q. The 20 new posters that you  
8 posted on campus, did they have the  
9 attendance prize language?

10 A. No.

11 Q. And is that because it was your  
12 understanding that was not approved?

13 A. I was told it was not approved.

14 Q. Is that why you didn't include  
15 that language in the posters?

16 A. The language was on the posters  
17 as I delivered them on Wednesday morning  
18 because I knew nothing about any reasoning  
19 behind that decision. So with the 20  
20 posters, Carl Oliveri and I together  
21 snipped off with scissors the prize  
22 announcement part of the posters leaving  
23 the e-mail contact information, and then  
24 those are the posters that got hung up as

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1 soon as I left the office.

2 Q. Okay.

3 A. And some of those posters were  
4 torn -- were missing later in the day.

5 Q. And I believe you testified you  
6 don't know the whereabouts of those  
7 posters, correct?

8 A. I do not know.

9 Q. And do you have any idea how  
10 many posters were missing, using your  
11 words?

12 A. Well, I know I took some  
13 pictures of blank walls, so I would say  
14 about at least seven or ten especially on  
15 big areas like on a wall by the hallway or  
16 the stairs come in from outside in LAC, so  
17 some posters were missing that day.

18 Q. Did anyone tell you what they  
19 believed happened with those posters?

20 A. I sent an e-mail to Carl  
21 Oliveri that day and said, gee, Carl, even  
22 those posters were torn down even though  
23 they had had the prize announcement torn  
24 off, and he wrote back saying he had no

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1 knowledge of that, basically saying that  
2 he did not direct those posters to be torn  
3 down.

4 MS. PEET: Okay. Let's just  
5 let her finish the tape.

6 ---

7 THE VIDEOGRAPHER: We are now  
8 off the record. The time is 11:45  
9 a.m. This ends disk number one.

10 ---

11 (At this time, a short break  
12 was taken.)

13 ---

14 THE VIDEOGRAPHER: We are now  
15 on the record. The time is 11:49  
16 a.m. This starts disk number two.

17 ---

18 (At this time, a document was  
19 marked for identification as Exhibit  
20 Fagal-7.)

21 ---

22 BY MS. PEET:

23 Q. Dr. Fagal, have you ever seen  
24 this document before?

30 (Pages 114 to 117)

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1 A. I believe I have as a quick --  
 2 long time ago.  
 3 Q. Okay.  
 4 Is it fair to say that this is  
 5 Sister Munley's response to the letter  
 6 that Marywood received from Peter Bonilla  
 7 at FIRE?  
 8 A. I assume that's correct.  
 9 Q. Okay.  
 10 It says here please note that  
 11 the posters announcing the lecture but not  
 12 the offer of a monetary reward for  
 13 attendance were permitted to be posted  
 14 throughout the university campus.  
 15 Did I read that correctly?  
 16 A. Let me see where this is now.  
 17 Let's see.  
 18 Q. It's the fourth line of the  
 19 first paragraph. It starts with please.  
 20 A. I see what the second sentence  
 21 says.  
 22 Q. All my question was do you see  
 23 that.  
 24 A. What is your question?

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1 Q. Do you see that?  
 2 A. I see that.  
 3 Q. Okay.  
 4 Is it true that posters that  
 5 did not offer the monetary reward for  
 6 attendance were posted and allowed to be  
 7 posted at the university?  
 8 A. Yes, subject to the  
 9 qualification that some of those posters  
 10 that were approved without the prize  
 11 announcement were torn down or went  
 12 missing on the day of the lecture, the day  
 13 they were hung.  
 14 Q. And were those the posters that  
 15 you testified that Carl told you he didn't  
 16 know what happened?  
 17 A. Yes.  
 18 Q. And Carl told you that he did  
 19 not authorize, or approve, or tell anyone  
 20 to take down those posters?  
 21 A. I believe he said something to  
 22 those -- he said something along those  
 23 lines.  
 24 Q. Are you aware of anyone else at

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1 Marywood that instructed or told anyone to  
 2 remove those posters?  
 3 A. I don't know who gave the  
 4 directions to tear down the posters or --  
 5 nor do I know who tore down the posters.  
 6 Q. You don't even know if a  
 7 direction was given, correct?  
 8 A. I have no firsthand knowledge  
 9 that the direction was given.  
 10 Q. Okay.  
 11 A. Other than being told by Carl  
 12 Oliveri that we tore down the posters.  
 13 Q. I'm talking about the 20 new  
 14 posters that you posted.  
 15 A. No.  
 16 Q. Do you have any knowledge that  
 17 anyone from Marywood instructed anyone to  
 18 take them down?  
 19 A. I have no knowledge but I could  
 20 speculate.  
 21 Q. Okay.  
 22 And the FIRE lecture took place  
 23 on the university, correct?  
 24 A. FIRE took place at the

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1 university.  
 2 Q. Did you receive a copy of what  
 3 is marked as Exhibit-7?  
 4 A. Yes.  
 5 May I point something out in  
 6 regard to the second sentence?  
 7 Q. Sure.  
 8 A. It says the alleged occurrence  
 9 is in regard to taking down a poster  
 10 announcing a lecture. A poster is  
 11 singular. We're talking about multiple  
 12 posters being taken down.  
 13 Q. Okay.  
 14 So you take issue with the fact  
 15 that it says a poster, correct?  
 16 A. Yes, I do.  
 17 Q. Okay.  
 18 The posters that were taken  
 19 down, were they for the same event?  
 20 A. Yes.  
 21 Q. Okay.  
 22 And the posters were largely  
 23 identical except for maybe size?  
 24 A. Yes.

31 (Pages 118 to 121)

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1 Q. Anything else that you take  
2 issue with?

3 A. Factually, let me see. I don't  
4 understand what both sets of posters might  
5 be. Try to help me here. The sentence  
6 that says moreover, the lecture announced  
7 in the posters was conducted on the  
8 university campus in the Comerford Theater  
9 on November 30, 2011, as advertised in  
10 both sets of posters.

11 So both -- the first set of  
12 posters would be the set that had been  
13 stamped approved with the prize  
14 announcements and then were torn down, so  
15 they were up for a brief while. The  
16 second set of posters -- when you say both  
17 sets, I presume two. The second set of  
18 posters were those stamped approved on  
19 Wednesday the 30th and they did not have  
20 the prize announcement on them and many of  
21 those were torn down.

22 If I may speculate here, I'm  
23 assuming that perhaps a work study student  
24 was originally told tear down the posters

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1 that announce the speech and that -- at  
2 that point, all the posters had on them  
3 the FIRE announcement -- I mean the prize  
4 announcement, and the student doing the  
5 best he or she could tore down those  
6 posters.

7 And then on Wednesday morning,  
8 being a good work study student said oh,  
9 my goodness, here are more posters. Let  
10 me do my job and tear them down even  
11 though Carl Oliveri, if asked, would say  
12 no, no, no, those posters are fine, leave  
13 them up.

14 So what I believe is that those  
15 posters were torn down by somebody like I  
16 just described but not under the direction  
17 of Carl Oliveri. That's what I think but  
18 I have no firsthand knowledge.

19 Q. Do you believe Mr. Bonilla or  
20 someone else from FIRE gave you this  
21 letter?

22 A. This response from Sister Reed  
23 -- I mean Sister Munley?

24 Q. Sister Munley.

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1 A. I can't recall.

2 - - -

3 (At this time, a document was  
4 marked for identification as Exhibit  
5 Fagal-8.)  
6 - - -

7 BY MS. PEET:

8 Q. Do you recognize this document?

9 A. Yes.

10 Q. Did you write this?

11 A. Yes.

12 Q. Did anyone help you write this?

13 A. No.

14 Q. Did you show it to anyone  
15 before you sent it to Dr. Levine?

16 A. I can't remember exactly. I  
17 might have shown it or parts of it to  
18 Dr. Jackson.

19 Q. Do you remember what his  
20 reaction was, if anything?

21 A. I believe he might have -- let  
22 me say as I recall, he said -- I was  
23 asking when I had my list of requests, he  
24 said maybe I'm asking for too much and of

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1 course that would be -- maybe I wouldn't  
2 expect all those requests to be granted  
3 but that would be a bargain point and one  
4 could then say, okay, I'll give up the  
5 apology for the speaker or whatever. So  
6 that was an opening list of things that I  
7 thought should happen based on the past.

8 Q. When Jackson told you maybe  
9 you're asking for too much, did you make  
10 any changes?

11 A. I can't recall. I don't think  
12 so though.

13 Q. Did you ever want to demand  
14 more than what you demand in here?

15 A. No.

16 Q. How did you come up with this  
17 list of demands?

18 A. Marywood had held events that I  
19 had been aware of where they would have  
20 prize money and food and stuff like that  
21 offered to the students to come to the  
22 events, so I thought, well, that would be  
23 good.

24 Q. In those situations you just

32 (Pages 122 to 125)

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1 described, was it ever associated with a  
2 course?

3 A. There were -- there were  
4 associations with courses in the sense  
5 that professors were encouraged to come  
6 and bring their class and have it be part  
7 of their class for that evening, so that  
8 would be an official class.

9 Q. What about instructors putting  
10 a monetary prize for a lecture that's part  
11 of a course syllabus?

12 A. What about that? What was the  
13 question?

14 Q. Are you aware of that  
15 happening?

16 A. I'm not aware of professors  
17 offering monetary prizes to their class.  
18 I know Alan Levine, for example, told me  
19 about professors bringing pizza to class.

20 Q. What about a monetary prize for  
21 attending a course or a lecture affiliated  
22 with a course?

23 A. I don't recall any.

24 Q. Okay.

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1 At the time that you made these  
2 list of demands, I assume you already knew  
3 that there were -- it wasn't in the budget  
4 for Marywood to pay a thousand dollars for  
5 a speaker, correct?

6 A. No.

7 Q. Well, I think you testified  
8 earlier that you were told that there was  
9 no room in the budget to pay to have a  
10 FIRE -- or any speaker come to campus,  
11 correct?

12 A. I -- no. That was the fall  
13 semester of 2011. I'm not a budget person  
14 but I assume that budgets for the  
15 following semester would be different and  
16 things had not been totally allocated  
17 financially for that semester, and of  
18 course one could also say, well, gee, you  
19 know, there's no money in the 2011-2012  
20 budget, Professor Fagal, but we can do the  
21 fall of 2012. So that's something that's  
22 obviously to me anyway open to  
23 negotiation.

24 Q. Do you say anywhere in here

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1 that you're willing to negotiate?

2 A. I finish it by saying by  
3 agreeing to the above, I will consider  
4 this matter closed. I do not say anywhere  
5 that if you don't give me everything, then  
6 nothing can happen. So I think in any,  
7 you know, economic negotiation like this  
8 people will have their high offers and  
9 people have their low offers, and then  
10 there'll be negotiation in the normal  
11 course of business as I believe lawyers do  
12 all the time --

13 Q. Okay.

14 A. -- when they have settlements,  
15 for example.

16 Q. Did you make it known to  
17 Dr. Levine that you wanted to negotiate?

18 A. I believe that was the  
19 implication by my discussion with him and  
20 the fact that he sent -- he wanted to send  
21 this letter on to Sister Anne Munley. And  
22 I believe you're probably going to come to  
23 it, but he wrote later -- he said Sister  
24 Anne Munley -- I might not be quoting

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1 exactly. She agrees to none of your  
2 requests or demands, however he phrased  
3 it. So it was no movement by the other  
4 side to talk.

5 Q. Do you think you were  
6 reasonable in this e-mail?

7 A. I think I was reasonable in  
8 terms of an opening offer or suggestion.

9 Q. Do you think --

10 A. If you would like to go through  
11 these individually, go ahead.

12 Q. Do you think it's reasonable to  
13 tell a Catholic university that they  
14 should atone for its sins?

15 A. If they had -- if the  
16 university can be considered to have  
17 sinned, yes.

18 Q. But you wrote that?

19 A. Yes.

20 Q. So you think that was  
21 reasonable?

22 A. Yes.

23 Q. Okay.

24 Do you think it's reasonable

33 (Pages 126 to 129)



1 that they issue you a written public  
2 apology?

3 A. I think it's not unreasonable  
4 because I think that will -- confession  
5 might be good for the soul and will make  
6 one think twice before doing such things  
7 again in the future.

8 Q. Okay.

9 And that that written public  
10 apology be sent by e-mail to every faculty  
11 member including adjuncts and every  
12 student?

13 A. That would be my wish. I think  
14 that would -- you know, if something is --  
15 if people have made, shall we say,  
16 mistakes, to own up to your mistakes I  
17 think is a noble thing.

18 Q. Do you think it was reasonable?

19 A. What do you mean by reasonable?

20 Q. I'm asking you; do you think it  
21 was reasonable?

22 A. Yes.

23 Q. Okay.

24 Do you think it was reasonable

1 free to come to presentations at night  
2 and, therefore, a presentation at night  
3 would be good.

4 Q. Do you think that demand was  
5 reasonable?

6 A. Yes.

7 Q. Do you think it was reasonable  
8 that you said a week before the event  
9 Marywood will print ten 11 by 17 color  
10 posters, ten 11 by 17 black and white  
11 posters, ten 8 and a half by 14 color  
12 posters, and ten 8 and a half by 14 black  
13 and white posters advertising the event?

14 A. Yes.

15 Q. Do you think it was reasonable  
16 to demand that Marywood use the other  
17 \$1,000.00 FIRE fee plus food and motel  
18 bill to pay for an evening presentation  
19 open to the whole community probably in  
20 early April? Reasonable?

21 A. Yes, make it -- open it to the  
22 public and to the community would be I  
23 think not a bad idea. Marywood does have  
24 events where they invite -- make it clear

1 to ask Marywood to pay \$2,000.00 to FIRE  
2 to give two presentations on campus for  
3 spring 2012 and also pay normal meal and  
4 lodging expenses?

5 A. Yes. I believe when they  
6 invite speakers to come, they pay lodging  
7 expenses and meals.

8 Q. Okay.

9 Do you think it was reasonable  
10 to tell Marywood to host a \$1,000.00 FIRE  
11 session in -- probably in February for a  
12 daytime class presentation to the social  
13 science 201 class and the presentation  
14 should be open to all of campus?

15 A. Which number --

16 Q. Do you think that was  
17 reasonable?

18 A. Which number are we on?

19 Q. Five.

20 A. Well, my idea here, yes, was to  
21 have a daytime event because many students  
22 might be on campus during the day and so  
23 you would have a presentation during the  
24 day, and then sometimes students are more

1 to the community they're invited.

2 Q. Okay.

3 Reasonable for you to demand  
4 that Marywood spend at least \$1,000.00  
5 documented on publicity to be coordinated  
6 with you for the evening program which  
7 would be open to the public and all  
8 members of the campus community?

9 A. I would say this one would be a  
10 little -- a little more unreasonable given  
11 that there be -- that posters might go up.  
12 That would be a negotiating point, shall  
13 we say.

14 Q. Do you think it was reasonable  
15 to demand that Marywood provide 1,000  
16 thousand slices of free pizza and 500 cans  
17 of cold soda at the evening presentation?

18 A. Well, I think the soda might be  
19 reasonable because that will not spoil.  
20 So if only 200 people -- if 100 people  
21 showed up, it might be 100 cans of soda if  
22 everybody gets one and that would be it.

23 Q. Do you think it was reasonable?

24 A. The 500 cans of soda?

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1 Q. And the 1,000 slices of free  
2 pizza for your evening presentation.

3 A. I think that might be a bit of  
4 a reach. 1,000 slices of pizza depending  
5 on -- you know, two slices a person would  
6 be 500 people. That would be a pretty  
7 full house, a crowd, but, again, that  
8 could be -- instead of pizza one could  
9 offer Snickers bars or something. That's  
10 a negotiating point.

11 Q. You didn't demand Snickers  
12 bars.

13 You demanded 1,000 slices of  
14 pizza, correct?

15 A. What do you mean by demand?

16 Q. Aren't these demands?

17 A. Well, if I look back, it says  
18 -- let me read. Do I use the word  
19 "demand" anywhere and imply anywhere where  
20 it's all or nothing?

21 At the top of DEF2330, I wrote  
22 due to Marywood's actions, I request at  
23 this stage, and then I ask -- preceding  
24 number one, I ask that I immediately

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1 A. That's fine.

2 Q. My question to you --

3 A. Right.

4 Q. -- is do you feel that calling  
5 these demands is inappropriate, that  
6 that's not what they're -- that's not what  
7 you would call them?

8 A. I don't know if the word is  
9 inappropriate. A lot of people use  
10 demands in negotiation, these are my  
11 demands, and everybody knows that by  
12 demands you mean that the demands are open  
13 to negotiation.

14 Q. Okay.

15 A. So you have to qualify demands  
16 by saying that it's really all or nothing.

17 Q. Okay.

18 A. And these are not all or  
19 nothing demands.

20 Q. But these are demands  
21 nonetheless?

22 A. Some people call them demands.  
23 I would not call them demands. I don't  
24 think I use the word "demands" in here.

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1 receive by December 15th, and then I go on  
2 to item number one. I don't see -- help  
3 me out -- if there's anything here that  
4 says I'm going to stamp my feet and go  
5 home if I don't get all 11.

6 Q. Is it your position that these  
7 are not -- cannot -- should not be  
8 characterized as demands?

9 A. They should not be  
10 characterized as demands if by demands you  
11 mean that it's all or nothing.

12 Q. It's however you define  
13 demands.

14 A. That's how I define --

15 Q. Is it you feel that these are  
16 not demands?

17 A. I believe any -- I believe  
18 these are -- if by demands you mean all or  
19 nothing, I will not talk about anything  
20 else, I will not negotiate, this is it,  
21 then I would say these are not demands.

22 Q. Okay. I'm not defining it.

23 A. Okay. I just --

24 Q. It's however you define it.

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1 Q. Okay.

2 Do you think it was reasonable  
3 to require that -- to ensure the publicity  
4 for each event it must include two  
5 separate e-mails, they have to be approved  
6 by you, sent to the complete faculty list  
7 including adjuncts and the student e-mail  
8 list. The e-mails will advertise the  
9 upcoming FIRE event and these, probably in  
10 April, evening event e-mails will include  
11 the offer of free pizza. For each FIRE  
12 event that the first e-mail will be sent  
13 one week before the event. The remainder  
14 e-mails also with complete information --

15 A. Reminder. Excuse me.

16 Q. -- will be sent 24 hours before  
17 each event. Every e-mail must meet your  
18 approval.

19 Is that reasonable?

20 A. Yes, and let me explain. Two  
21 separate e-mails, one ahead of time so the  
22 students have time to plan and then a  
23 last-minute reminder. I believe that  
24 aspect is reasonable. Sending e-mails

35 (Pages 134 to 137)

1 basically costs nothing but a small amount  
2 of time for somebody to compose the  
3 e-mail. The free pizza business, whether  
4 it's free pizza or a one cent Tootsie  
5 Roll, that is obviously open to  
6 negotiation from the previous discussion  
7 we just had.

8 And every e-mail must meet my  
9 approval, you know, one can couch an  
10 e-mail announcement in terms of, let's  
11 say, coloring the enthusiasm with which  
12 the e-mail is sent out. So I just was  
13 trying to make sure it was a fair e-mail  
14 that went out. I did not say I would  
15 write the e-mail. I would just say the  
16 e-mail would have my approval.

17 Q. Okay.

18 And it's your position that  
19 this --

20 A. Is reasonable.

21 Q. -- demand or request, whatever  
22 you want to call it in number ten --

23 A. I would call it reasonable.

24 Q. -- is reasonable?

1 A. I would call it reasonable.

2 Q. Okay.

3 Just for clarification, you did  
4 not send an e-mail ahead of time other  
5 than to your own class about the November  
6 30th speaker, correct?

7 A. That's correct.

8 Q. And you did not send any  
9 reminder e-mail before the November 30th  
10 event, correct?

11 A. No. I had no access to any  
12 student e-mail lists.

13 Q. Did you ask anyone to do that?

14 A. I did.

15 Q. Who did you ask?

16 A. I asked -- I believe it was Amy  
17 Paciej, one of the deans, to send out an  
18 e-mail announcing the event.

19 Q. And what was her response?

20 A. I can't recall her response but  
21 I know that she did not send it out.

22 Q. Did you -- how did you ask Amy,  
23 by e-mail?

24 A. Yes.

1 Q. Did you ask anyone else?

2 A. I can't recall, but the e-mail  
3 announcements about events like this would  
4 generally come from her.

5 Q. Do you think it was reasonable  
6 that requesting or demanding, whatever  
7 words you want, of Marywood that by  
8 sponsoring a fall 2012 appearance on  
9 campus by Robert Spencer of Jihad,  
10 J-I-H-A-D, Watch that Mr. Spencer, based  
11 on the jihadwatch.org Web site, will be  
12 willing to debate anyone regarding aspects  
13 of Islam but his appearance would not be  
14 contingent on the existence of a debater  
15 for the other side?

16 You continue that the event  
17 shall be publicized by the number of  
18 posters outlined in number five and by  
19 single topic e-mails sent to the faculty  
20 and student e-mail lists as outlined  
21 above. You continue that your friends and  
22 you will hang the posters designed with  
23 your approval. The opposition side in the  
24 proposed debate can of course hang its own

1 posters or participate in the poster  
2 design.

3 Do you think that was  
4 reasonable?

5 A. Well, yes, in the sense that  
6 it's easy to be for ideas one supports.  
7 It's easy to be for free speech when it  
8 supports your ideas. It's hard to  
9 sponsor, shall we say, a debate in which  
10 one might hear two widely opposing views,  
11 and as a university I think that would be  
12 a -- it's a good thing to have happen to  
13 have students exposed to wide range of  
14 viewpoints.

15 Q. For your demand number 11,  
16 there's no requirement by you that there  
17 be a debater on the other side, correct?

18 A. Correct.

19 Q. So it would be possible then  
20 that it would only have one side on the  
21 topic, correct?

22 A. That's correct, and that's  
23 because sometimes Mr. Spencer, as I  
24 understand it, has had trouble getting

1 debaters. So if you want to present a  
2 side that says red is the favorite color  
3 but we must have a debater on the other  
4 side for a different color, well, if the  
5 other -- if the other color says I won't  
6 show up at the debate, then you don't get  
7 the red point of view.

8 So one way to prevent the red  
9 point of view would be to have the other  
10 colors refuse to show up. So I would want  
11 -- the whole point of that is to have a  
12 debate or a presentation of different  
13 views. That was the whole point. That's  
14 what I would want. I would not want a  
15 one-sided presentation.

16 Q. But you didn't require two  
17 different views, correct, for number 11?

18 A. I didn't require it because --  
19 but I would fully support it. I would  
20 even probably paid money to ensure that it  
21 happened if it was a question of money.

22 Q. Did you think the university  
23 was going to accept your 11 demands?

24 A. I would have been shocked and

1 pleasantly surprised if it accepted all 11  
2 demands. I would say I didn't expect all  
3 11 demands to be accepted, but they  
4 weren't really demands in the sense of all  
5 or nothing. They were negotiating let's  
6 talk items.

7 Q. What did you think Marywood's  
8 reaction was going to be?

9 A. I didn't know what it would be.  
10 I would have been guessing on my part. I  
11 could guess.

12 Q. I'm asking you at the time that  
13 you drafted this, what did you think the  
14 university's response was going to be?

15 A. I thought that the university  
16 would admit to me that it had wrongly torn  
17 down the posters with the prize money,  
18 and, by the way, they did not even inform  
19 me of that. They could have -- the  
20 university could have simply scratched out  
21 the prize announcement with a black magic  
22 marker, and so I thought it was rather,  
23 shall we say, bad behavior on the part of  
24 the university with regard to the whole

1 posters incident.

2 I also thought that perhaps the  
3 university had a way out in terms of  
4 perhaps Sister Munley was, I thought at  
5 the time, maybe not fully informed about  
6 what had happened at the lower levels of  
7 the tearing down, whether I believe at  
8 some point there was a discussion that the  
9 other posters that were torn down were not  
10 stamped approved, which was totally wrong.  
11 They were all stamped approved, but there  
12 was that story out there among the  
13 administration.

14 And so, therefore, if Sister  
15 Munley had said to me, gee, Fred, you're  
16 right, we goofed up, the posters shouldn't  
17 have been torn down, we made a mistake,  
18 but I can't do all these 11 things, and  
19 then I would presume she should have said  
20 you're right, we should reimburse you for  
21 the FIRE speaker and your posters  
22 expenses. We should reimburse you the  
23 \$500.00 that you paid out to try to do a  
24 good job for the university. I will, you

1 know, do my best to make sure that this  
2 doesn't happen again, but I would really  
3 not issue a public apology but I will  
4 invite some more FIRE speakers to come to  
5 campus next weekend.

6 And so basically if Sister Anne  
7 Munley had gone that route, then she would  
8 have paid me \$500.00, basically apologized  
9 to me in private. She would have invited  
10 FIRE speakers, say, to come to an evening  
11 presentation, something like that, and I  
12 could have lived with that. Of course, I  
13 would have preferred, you know, a  
14 full-blown let's go for some excitement on  
15 campus with controversial debate but I'm  
16 not unreasonable. I thought that would  
17 have been a good response and a correct  
18 response. If I was president, that's what  
19 I would have done.

20 Q. Do you -- can you see how  
21 someone would find your 11 demands to be  
22 unreasonable?

23 A. I can see how somebody would  
24 say that's way too much to ask for for a

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1 case like this. Yes, I can see that point  
2 of view.

3 Q. Did you ultimately meet with  
4 Dr. Levine regarding the posters?

5 A. Yes.

6 Q. And I believe that happened on  
7 or around December 5, 2011?

8 A. Yes. I'd have to refresh --  
9 yes. I sent this letter, Exhibit-8, on  
10 December 2nd. Was it -- at some point I  
11 was told President Munley considered and  
12 will give you nothing.

13 Q. So you had a meeting with  
14 Dr. Levine?

15 A. Yes.

16 Q. Who was at the meeting?

17 A. I believe it was just  
18 Dr. Levine and I.

19 Q. And the meeting, just for  
20 purposes of chronology, was after you sent  
21 this letter, correct?

22 A. Yes. This letter is December  
23 2nd, and December 5th meeting sounds  
24 correct.

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1 Q. Just to refresh your  
2 recollection, if you can go through your  
3 stack there and pull out Exhibit-5, which  
4 is the chronology of events --

5 A. Yes.

6 Q. -- that you prepared.

7 A. Okay.

8 Q. If you can flip to the Bates  
9 stamp on the bottom is DEF001468.

10 A. Okay.

11 Q. You wrote those comments,  
12 correct?

13 A. Comment 15?

14 Q. Yeah. It says while driving  
15 home after the December 5 meeting --

16 A. Let's see.

17 Q. -- with Alan Levine.

18 Does that refresh your memory  
19 of when the meeting you had with  
20 Dr. Levine was?

21 A. Yeah. Let me see here. Okay.  
22 So he was --

23 MR. COHEN: What Bates stamp  
24 are we looking at?

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1 MS. PEET: 1468.

2 THE WITNESS: Yes. So this was  
3 when I believe I had the discussion  
4 with Dr. Levine about the pandering.

5 BY MS. PEET:

6 Q. Okay.

7 And I believe you testified  
8 about that earlier.

9 Have we exhausted what happened  
10 at that meeting with Dr. Levine and what  
11 was discussed?

12 A. Yes. He brought up the  
13 pandering and he said the executive  
14 council had discussed it and that was --  
15 pandering was a bad thing.

16 Q. Okay.

17 Anything else that was  
18 discussed during that meeting?

19 A. Checking here on the dates.  
20 When did -- my December 2nd letter went  
21 out and so he -- let's see. I believe I  
22 had met with Dr. Levine a bit earlier,  
23 December 1st.

24 Q. Would that have been before you

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1 drafted the list of demands because that's  
2 dated December 2nd?

3 A. That's dated December 2nd.  
4 Check my chronology here.

5 Q. According to your chronology,  
6 you had a meeting with him on December  
7 5th. That's what you --

8 A. Yes, I understand that. Let me  
9 see here. No. If you look at -- let's  
10 see here. Let's see, 1461. There's a  
11 December 1st e-mail where I say I'm still  
12 at loss to explain for what happened.

13 Q. I'm just asking about your  
14 meeting with Dr. Levine.

15 A. Yeah. I'm trying to remember  
16 which meeting because I think there might  
17 have been two. I'm getting a little --

18 Q. And I'm asking about the  
19 meeting that you had with Dr. Levine about  
20 your list of demands which was on December  
21 -- sent on December 2nd, and we know you  
22 met with him on December 5th.

23 A. What I did was when I -- trying  
24 to recall here. I met with Alan Levine

38 (Pages 146 to 149)

Page 150

1 and I had printed out, I believe, the list  
2 of demands, if you want to call them  
3 demands, and Alan read that list at that  
4 meeting where he first saw them, and then  
5 he said would you please send them to me  
6 by e-mail so that I could then send them  
7 on to President Munley. And so he saw  
8 that letter by hand-printed copy before he  
9 saw it by e-mail.

10 Q. Okay.

11 A. And so I'm trying to -- I'd  
12 have to review here to figure out exactly  
13 when in the chronology --

14 Q. It's okay.

15 A. Okay.

16 Q. How did the meeting conclude?

17 A. The first e-mail with -- I'm  
18 trying to --

19 Q. Meeting. I'm sorry, meeting.

20 A. Yeah. The first -- the  
21 meetings were all cordial. The meeting  
22 where I first showed Alan the letter he  
23 said he would forward it on to Sister --  
24 President Anne Munley, and we had that

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1 meeting?

2 A. Yes. I didn't expect him to  
3 have any power to grant any of my wishes.

4 Q. And you think that it was the  
5 president that would have the power to  
6 grant those wishes, right?

7 A. Yes.

8 Q. Do you know Dr. Levine's  
9 religion?

10 A. Not for a fact.

11 Q. What do you believe it to be?

12 A. I assumed he was Jewish.

13 Q. Did you assume he was Jewish  
14 when you met with him in December of 2011?

15 A. I think I had always assumed  
16 it, just not as any big deal.

17 - - -

18 (At this time, a document was  
19 marked for identification as Exhibit  
20 Fagal-9.)

21 - - -

22 BY MS. PEET:

23 Q. What has been placed before you  
24 as Exhibit-9 seems to be an e-mail chain.

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1 pandering discussion. And so then you  
2 referred me to -- that's when I told him  
3 about the -- later that night I told him  
4 about the Harvard professor.

5 And what page were we on for  
6 that? I'm sorry.

7 Q. I'm not on a page. I was just  
8 trying to refresh --

9 A. Okay.

10 Q. -- your recollection about  
11 December 5th. That's all.

12 A. I'd have to review. I can't  
13 recall exactly --

14 Q. Okay.

15 A. -- that exact date.

16 Q. So did the meeting conclude  
17 with Dr. Levine saying please send me the  
18 e-mail of the demands and I'll present  
19 them to Sister Munley?

20 A. If that was the meeting when I  
21 first showed him the picture, that's what  
22 he said, yes.

23 Q. Okay.

24 Were you satisfied with that

Page 153

1 If you look at the first page, there are  
2 e-mails between you and Dr. Jackson.

3 Do you see that?

4 A. I see. I haven't seen these  
5 lately. Go ahead.

6 Q. Okay.

7 Are these in fact e-mails that  
8 you and Dr. Jackson were sending each  
9 other in December of 2011?

10 A. Yes, they appear to be.

11 Q. And just for the record, these  
12 are -- these three pages are documents  
13 that you produced to Marywood in this  
14 case?

15 A. Yes.

16 Q. Okay.

17 Who is Adolf Eichmann?

18 A. He was a German in World War II  
19 who was fairly low level functionary who  
20 signed orders or, you know, did processing  
21 sending Jews to the gas chamber and he was  
22 captured by Israeli Mossad in 1960 in I  
23 think -- I think it was Brazil, and there  
24 was a trial in the early 1960s in Israel

39 (Pages 150 to 153)

Page 154

1 and I believe he was executed.

2 Q. Did you say he sent Jews to gas  
3 chambers?

4 A. I don't know that he had the  
5 power to do that but, you know, he was --  
6 I don't know the exact details of what his  
7 powers were but he was functioning as  
8 such.

9 Q. On the top of page two, do you  
10 write that Alan becomes the equivalent of  
11 Adolf Eichmann? Do you see that?

12 A. Yes, I do. And I would like to  
13 point out my parenthetical comment, well,  
14 comma, not quite the gas chambers, comma,  
15 but the same idea.

16 Q. Okay.

17 And when you say --

18 A. Meaning -- meaning simply, as I  
19 just explained, that Alan Levine -- I  
20 viewed him as being a functionary.

21 Q. And was Adolf Eichmann a  
22 functionary of Adolf Hitler?

23 A. Yes.

24 Q. Okay.

Page 155

1 So you're -- okay.

2 And the Alan in this e-mail, is  
3 that Alan Levine?

4 A. Yes.

5 Q. If you look back to the first  
6 page, there's an e-mail from Dr. Jackson  
7 to you. It says Eichmann slash Alan,  
8 dash, get that meta out of your head  
9 before it comes out at the wrong time.

10 Do you know what he meant by  
11 that?

12 A. In the very top first part?

13 Q. The e-mail from --

14 A. Where I say I thought the  
15 Eichmann comparison might get him to wake  
16 up but maybe it can be toned down?

17 Q. I'm referring to -- if you look  
18 down a little bit, there's an e-mail from  
19 Dr. Jackson to you.

20 A. What time of day? Which one  
21 are you looking at?

22 Q. December 2, 2011, 9:19 p.m.

23 A. Okay.

24 Q. And Dr. Jackson writes Eichmann

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1 slash Alan, dash, get that meta out of  
2 your head before it comes out at the wrong  
3 time.

4 Do you see that?

5 A. Yes, I do.

6 Q. What do you think he meant by  
7 that?

8 A. He's saying that some people  
9 have, shall we say, gut reactions to even  
10 the mention of that relationship to call  
11 -- if you say somebody is a -- say a  
12 lackey of somebody where they do their  
13 bidding because it's their job to follow  
14 orders, and if the orders are not, shall  
15 we say, good orders, if I -- if somebody  
16 says well, that would be Eichmann-like,  
17 that might be, you know, you're saluting  
18 and saying yes, ma'am, I'll do what you  
19 say.

20 I personally don't see any  
21 connotation where if you're saying  
22 somebody is Eichmann-like that they are  
23 actually anti-semitic or sending Jews to  
24 the gas chamber or anything at all like

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1 that. It simply means that they are doing  
2 the boss's -- boss's bidding in this  
3 instance, nothing --

4 Q. Do you -- do you see how if you  
5 refer to someone as Alan Eichmann, how  
6 they can -- how they can view that as  
7 perhaps anti-semitic?

8 A. Some people might view that.  
9 People view things different ways.

10 Q. Okay.

11 Do you think someone could be  
12 offended if you refer to them as Alan  
13 Eichmann who is in part responsible for  
14 killing over six million Jews?

15 A. They could be. They could be.

16 ---

17 (At this time, a document was  
18 marked for identification as Exhibit  
19 Fagal-10.)

20 ---

21 BY MS. PEET:

22 Q. Do you recognize this letter?

23 A. Yes. Let me read it quickly,  
24 please.

40 (Pages 154 to 157)

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1 Q. Sure.  
 2 ---  
 3 (At this time, the witness  
 4 complies with request.)  
 5 ---  
 6 THE WITNESS: Okay.  
 7 BY MS. PEET:  
 8 Q. Okay.  
 9 Do you recall receiving this  
 10 letter from Dr. Levine?  
 11 A. Yes.  
 12 Q. What was your reaction?  
 13 A. I was a little surprised and  
 14 disappointed. I would say dis -- yes.  
 15 Q. At the time that you received  
 16 this letter, December 15, 2011, did you  
 17 already have the idea of creating this  
 18 video?  
 19 A. No, I don't believe I did.  
 20 Q. Did you have any idea what you  
 21 were going to do if Marywood didn't agree  
 22 to your demands?  
 23 A. No. I thought about -- I  
 24 didn't have any specific ideas. I thought

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1 about maybe getting FIRE involved.  
 2 Q. Anything else?  
 3 A. The thought crossed my mind  
 4 that maybe I would contact Glenn Reynolds  
 5 perhaps at Instapundit which is a big  
 6 blog.  
 7 Q. Anything else?  
 8 A. Not that I can recall.  
 9 Q. What about sitting down with  
 10 Sister Munley?  
 11 A. Well, I already sent her -- she  
 12 already got the complete letter and I had  
 13 laid everything out as totally clearly as  
 14 possible. I thought the letter -- it says  
 15 appears -- Alan wrote appears we have a  
 16 different understanding of what  
 17 transpired.  
 18 I thought Marywood is not  
 19 interested in finding out the truth about  
 20 the posters because I thought it was quite  
 21 clear and that Marywood could have  
 22 investigated, you know, was Carl Oliveri  
 23 not there, was the grad student who  
 24 stamped them approved -- was she

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1 misinformed or not informed, you know.  
 2 Was there an out? I had given all those  
 3 possibilities and this to me was just  
 4 saying done, President Munley is not  
 5 interested in talking to you at all,  
 6 period.  
 7 Q. So is it fair to say you did  
 8 not request a meeting with her?  
 9 A. I did not request a meeting  
 10 with her.  
 11 Q. Did you get FIRE involved at  
 12 this point?  
 13 A. Well, we discussed there was a  
 14 letter that went out. We -- yes, FIRE  
 15 did --  
 16 Q. Okay.  
 17 A. -- was involved.  
 18 Q. So other than -- anything other  
 19 than those letters for FIRE involvement?  
 20 A. I did not contact the blog or  
 21 anything like that.  
 22 Q. When you say the blog, would  
 23 that be Instapundit?  
 24 A. Yes.

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1 Q. You did not contact them?  
 2 A. No.  
 3 Q. Did you post on  
 4 marywoodfreespeech.com about this?  
 5 A. No.  
 6 Q. When did you decide to create  
 7 these videos?  
 8 A. I don't remember the exact  
 9 dates. The Downfall movie parody videos  
 10 were and have been a huge event on  
 11 YouTube. They're often used to get points  
 12 across and usually in a humorous way. It  
 13 helps attract an audience and some of the  
 14 topics that are used by the videos on  
 15 YouTube on Downfall are humorous, some are  
 16 serious.  
 17 For example, there was one that  
 18 compared the New York State commissioner  
 19 of education and they had his, you know,  
 20 policy decisions, you know, evidenced in a  
 21 Downfall YouTube video. So these are  
 22 very, very popular, their own Wikipedia  
 23 page, and so this is a way to maybe get  
 24 the message out.

41 (Pages 158 to 161)



Page 162

1 Q. What message?  
 2 A. In this case, what had happened  
 3 in regard to the posters tear down  
 4 incident.  
 5 ---  
 6 (At this time, a document was  
 7 marked for identification as Exhibit  
 8 Fagal-11.)  
 9 ---  
 10 BY MS. PEET:  
 11 Q. Exhibit-11, would you agree,  
 12 are e-mail communications between you and  
 13 Pamela Parsons --  
 14 A. Yes.  
 15 Q. -- on December 14, 2011?  
 16 A. Yes.  
 17 Q. Okay.  
 18 If you look at the bottom of  
 19 the first page, it's an e-mail from you to  
 20 Pam, December 13, 2011, at 6:30 p.m.  
 21 Do you see that?  
 22 A. Yes.  
 23 Q. And you -- I -- you say I  
 24 included the demand dash requests in this

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1 A. Which words?  
 2 Q. Demand.  
 3 A. Yes.  
 4 Q. Above that Pam writes you back,  
 5 and one of the things she says or  
 6 questions is can you get legal advice  
 7 before commencing.  
 8 Do you see that?  
 9 A. Yes.  
 10 Q. Did you get legal advice before  
 11 commencing?  
 12 A. No.  
 13 Q. Why not?  
 14 A. I wasn't thinking of this  
 15 really as a legal issue. It was just an  
 16 issue I had to deal with.  
 17 Q. But Pamela thought maybe you  
 18 should get legal advice?  
 19 A. I don't know if she thought  
 20 that. She asked -- she said -- she wrote  
 21 what she wrote.  
 22 Q. Okay.  
 23 Right above that you send her  
 24 an e-mail, and one of the things you

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1 version.  
 2 A. Okay.  
 3 Q. In the, quote, demand letter I  
 4 sent Alan Levine last week, I asked for  
 5 reimbursement by the 15th, so I guess I  
 6 will hang tight at least until then.  
 7 Do you see that?  
 8 A. Yes.  
 9 May I point something out,  
 10 please.  
 11 Q. Sure.  
 12 A. The word "demand" is in quotes.  
 13 Q. Okay.  
 14 Did you write the word  
 15 "demand"?  
 16 A. Yes.  
 17 Q. And the demand letter that  
 18 you're referring to that you sent to Alan  
 19 Levine, is that what we've already  
 20 discussed and has been marked as  
 21 Exhibit-8?  
 22 A. Yes, it would be.  
 23 Q. And those were your words,  
 24 correct?

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1 write, I did write it in a way which might  
 2 suggest that I am ready to fight, open  
 3 parentheses, in court perhaps, closed  
 4 parentheses, period.  
 5 Were you still not thinking  
 6 litigation at that point?  
 7 A. I was actually thinking suing  
 8 in small claims court for tearing down my  
 9 posters and making the publicity that way.  
 10 I wasn't thinking it was any giant legal  
 11 action.  
 12 Q. If you read right above that,  
 13 you say don't know if my brother-in-law  
 14 lawyer will have time or inclination to  
 15 look at this.  
 16 A. Right.  
 17 Q. Not his area of the law. I  
 18 will run it by a University of Chicago law  
 19 student to see what he thinks.  
 20 Are you referring to a small  
 21 claims court matter?  
 22 A. No. I was just seeing if they  
 23 had any ideas. I wasn't thinking of any  
 24 action I was going to take.

42 (Pages 162 to 165)

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1 Q. Were you trying to prepare  
2 yourself for action that might be taken  
3 against you?

4 A. I didn't know. I was thinking  
5 -- I was -- my brother-in-law is a good  
6 lawyer. If I -- at Christmastime if I  
7 said to him, gee, Jim, you know, I've  
8 gotten in a brouhaha with the university  
9 and if he said what happened, Fred, and I  
10 told him, I showed him the e-mail thread,  
11 and, you know, I don't know what -- I  
12 don't know what he'd think about that. He  
13 might -- he'd probably say well, you  
14 know -- you know, he's too -- he wouldn't  
15 want to get involved in the small stuff,  
16 right, so not his area of the law. I know  
17 that.

18 The University of Chicago  
19 student was a former Marywood student who  
20 worked heavily on free speech issues and,  
21 you know, if they thought there was  
22 something I should be careful of, they  
23 might tell me, Fred, be careful, don't do  
24 this, but I had no plans to do any --

1 A. It was a quick little -- it  
2 just showed a picture of the pillar.

3 Q. Correct.

4 A. Yeah. We produced it recently,  
5 yes.

6 MS. PEET: Why don't we take a  
7 break here.

8 ---

9 THE VIDEOGRAPHER: We're now  
10 off the record. The time is 12:46  
11 p.m.

12 ---

13 (At this time, a luncheon  
14 recess was taken.)

15 ---

16 THE VIDEOGRAPHER: We are now  
17 on the record. The time is 1:33 p.m.

18 ---

19 BY MS. PEET:

20 Q. Mr. Fagal, are you ready to  
21 continue?

22 A. Yes, I am.

23 Q. Just a reminder, you're still  
24 under oath, so all of the testimony you

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Page 169

1 anything.

2 Q. Okay.

3 Who was the University of  
4 Chicago student to whom you're referring?

5 A. Who was it? William  
6 Ziegelbauer.

7 Q. Did you ever get the cartoon  
8 drawn that you reference here?

9 A. Pam sketched one real rough  
10 quick cartoon of a nun unidentified  
11 tearing -- I can't remember if it was  
12 unidentified but a nun tearing down a  
13 poster from a pillar, but I didn't use  
14 that in anything.

15 Q. Why not?

16 A. We were thinking of making a  
17 big montage sequence, shall we say, you  
18 know, cartoon showing posters being torn  
19 down around campus but it was just a mere,  
20 you know, quick discussion, no big plans.  
21 It didn't come to any fruition.

22 Q. That cartoon that you just  
23 referenced, was that what you produced  
24 yesterday as a quick little video?

1 give to the remainder of this deposition  
2 must be truthful, accurate, and complete.

3 Do you understand that?

4 A. Yes.

5 ---

6 (At this time, a document was  
7 marked for identification as Exhibit  
8 Fagal-12.)

9 ---

10 BY MS. PEET:

11 Q. Mr. Fagal, what has been placed  
12 before you is a two-page e-mail exchange  
13 between you and Pam Parsons in December of  
14 2011.

15 Do you see that?

16 A. Yes.

17 Q. Do you agree that that's what I  
18 purported to be is what it is?

19 A. Yes.

20 Q. The top e-mail seems to be from  
21 Pam to you.

22 A. Yes.

23 Q. Do you see that?

24 A. Uh-huh.

43 (Pages 166 to 169)

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1 Q. And then in the middle there's  
2 just two lines that seem to be from you to  
3 Pam, and then the bottom is an e-mail from  
4 Pam to you.

5 Do you see that?

6 A. Yes.

7 Q. What are you and Pam  
8 discussing?

9 A. I'm trying to think about how  
10 if I didn't get a response from Marywood  
11 about my 11 requests and some sort of  
12 negotiation about going public in some  
13 sense to a certain extent with what  
14 happened, and so we were talking about  
15 maybe some sort of cartoon poster.  
16 Nothing came of it but...

17 Q. Okay.

18 ---

19 (At this time, a document was  
20 marked for identification as Exhibit  
21 Fagal-13.)

22 ---

23 BY MS. PEET:

24 Q. Exhibit-13 is an e-mail from

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1 like that, so it's about the posters tear  
2 down.

3 Q. Okay.

4 If you turn -- keep on the  
5 first page. The end of the fourth  
6 paragraph. It's a very short paragraph.  
7 It says I think Alan Levine is deep down  
8 actually in my corner but no one but the  
9 president has any real power.

10 Do you see that?

11 A. No, I don't yet.

12 Q. On the first page.

13 A. Oh, the first -- not the  
14 Marywood's shame but before that?

15 Q. Yeah.

16 A. Okay.

17 Q. The cover e-mail.

18 A. Yeah, uh-huh. Fourth  
19 paragraph; one, two, three -- yeah.

20 Q. I think Alan Levine is deep  
21 down actually in my corner but no one but  
22 the president has any real power.

23 Do you see that?

24 A. Yes.

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1 you to William Ziegelbauer dated  
2 December 15, 2011, with attachments; is  
3 that correct?

4 A. Yes. I believe he pronounces  
5 his name Ziegelbauer, but that's okay,  
6 yes.

7 Q. I apologize.

8 Is this the person you  
9 discussed earlier that's a University of  
10 Chicago law student and a previous  
11 Marywood University student?

12 A. He was at the University of  
13 Chicago as a law student at the time, yes.

14 Q. And what is this first  
15 attachment? If you turn to the second  
16 page, it says Marywood's shame, November  
17 2000 -- November dash December 2011, and  
18 it says something about Professor Fagal  
19 again under attack.

20 What is this?

21 A. This would be a draft of an  
22 explanation as to what happened with --  
23 you know, going along with the timeline  
24 about being called a panderer and stuff

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1 Q. Do you still agree with that?

2 A. Do I still agree with that?

3 Q. Uh-huh.

4 A. Clarify the -- do you mean do I  
5 agree today that Alan Levine is in my  
6 corner? Is that the question?

7 Q. Yes.

8 Do you still agree with the  
9 statement that you wrote here?

10 A. No, not as much as I did then.

11 Q. And what changed that position?

12 A. In discovery I saw some e-mails  
13 that Alan Levine was involved with that  
14 implied that he wasn't happy with the  
15 posters, the speaker coming to campus and  
16 things like that.

17 Q. Okay.

18 The next paragraph says in  
19 bold, so unless I have grounds to sue the  
20 bastards.

21 Do you see that?

22 A. Uh-huh.

23 Q. Who are the bastards?

24 A. That would be the people who

44 (Pages 170 to 173)

Page 174

1 tore down my posters.

2 Q. Were you referring to Marywood  
3 University?

4 A. It was general statement that I  
5 was angry and I wanted to do something  
6 about it. It wasn't a real intention  
7 unless I have grounds, a violation of  
8 contract. I mean --

9 Q. Well, you --

10 A. -- as a professor, what rights  
11 did I have? So --

12 Q. Well, you sued Marywood for  
13 breach of contract?

14 A. Yes.

15 Q. So is Marywood University the  
16 bastards in this e-mail?

17 A. At least some people affiliated  
18 with it.

19 Q. Okay.

20 Who are the bastards?

21 A. If I had to name names, it  
22 would probably be -- I don't know -- Carl  
23 Oliveri. I didn't know who was involved.  
24 I knew that the executive council was

Page 176

1 A. Carl Oliveri I was presuming.

2 I think anybody who did not pursue -- Alan  
3 Levine I don't think pursued -- gave up  
4 pursuing -- as far as I could tell from  
5 his letter, gave up pursuing what happened  
6 with the posters tear down. This is  
7 basically an offhanded comment.

8 Q. Okay.

9 I'm just trying to have --

10 A. Okay.

11 Q. -- you identify who you  
12 think --

13 A. That's fine.

14 Q. Did you exhaust that?

15 A. Yeah. I was assuming here that  
16 Anne Munley was not directly involved in  
17 the, you know, initial posters tear down  
18 business. So I was assuming it was at a  
19 little lower level, but I didn't -- I  
20 didn't know for sure. That's why I was  
21 trying to give her -- give Alan Levine an  
22 out to say that there was  
23 miscommunication.

24 Q. You say here all I can do is

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1 somehow involved but I didn't know to what  
2 extent and who did what. For instance, I  
3 didn't know what any individual felt or  
4 was -- you know, who was the ringleader,  
5 for example. I did not know.

6 Q. Okay.

7 Do you think everyone in the  
8 executive council is a bastard?

9 A. That would depend on the term  
10 "bastard". I would say the traditional --  
11 I would have no idea. It depends on  
12 the --

13 Q. It's your wording, so however  
14 you interpret it.

15 A. Yeah. My wording here is not  
16 the son of an unmarried mother or daughter  
17 of an unmarried mother bastard but just a  
18 general term that people use all the time  
19 when you say those people who, you know,  
20 did me wrong or, you know, the team that  
21 beat my team, you know.

22 Q. Okay.

23 So who are the people that you  
24 believe did you wrong, Carl Oliveri?

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1 shame the hell out of them and hope a  
2 little bad publicity.

3 A. Uh-huh.

4 Q. Who were you trying to shame  
5 the hell out of?

6 A. Well, that would be the  
7 administrators and, in this case, it would  
8 be Anne Munley. She's in charge tearing  
9 down a free speech poster.

10 Q. The poster wasn't for free  
11 speech, correct? It was a poster  
12 advertising a speaking engagement,  
13 correct?

14 A. Speaking engagement by somebody  
15 from FIRE, and one of FIRE's main charges  
16 is free speech on college campuses.

17 Q. No one from the university or  
18 administration told you that the reason  
19 why the posters were removed were because  
20 of it was associated with FIRE or free  
21 speech, correct?

22 A. They did not tell me that.

23 Q. If you go down another  
24 paragraph, you -- the last sentence says I

45 (Pages 174 to 177)

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1 guess they will have to take comfort in  
 2 schadenfreude.  
 3 What is schadenfreude?  
 4 A. Where is the -- what line is  
 5 it?  
 6 Q. After you say hit them in the  
 7 solar plexus. I guess they will have to  
 8 take comfort in schadenfreude.  
 9 A. Let's see. So unless -- I'm  
 10 looking in the bold.  
 11 Now how many lines down are we  
 12 going?  
 13 Q. The next paragraph --  
 14 A. The next paragraph.  
 15 Q. -- starts to get --  
 16 A. Okay.  
 17 Q. -- info into the hands of  
 18 parents.  
 19 A. Yes. Schadenfreude, take  
 20 pleasure in the agony of others. I  
 21 believe that's the definition of that  
 22 term.  
 23 Q. So I guess they will have to  
 24 take comfort in the -- in the agony of

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1 marked for identification as Exhibit  
 2 Fagal-14.)  
 3 ---  
 4 BY MS. PEET:  
 5 Q. Do you agree that this is an  
 6 e-mail from you to Pam Parsons dated  
 7 December 19, 2011?  
 8 A. Yes.  
 9 Q. And, again, in this e-mail you  
 10 are talking to Pam about a possible comic  
 11 or cartoon about this FIRE incident,  
 12 correct?  
 13 A. Correct.  
 14 Q. And you talk about maybe  
 15 showing Sister Munley maybe wearing a  
 16 guarder belt with a little dog and the  
 17 female lawyer Paterson.  
 18 Are you referring to Sister  
 19 Mary Theresa Paterson?  
 20 A. Is she a nun?  
 21 Q. I said Mary Theresa Paterson.  
 22 She's not a nun.  
 23 A. Right.  
 24 Q. Okay.

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1 others is what --  
 2 A. Yes.  
 3 Q. -- you meant to write?  
 4 A. Uh-huh.  
 5 Q. Okay.  
 6 And whose agony were you trying  
 7 to take comfort in?  
 8 A. Let me read the paragraph here.  
 9 Q. Sure.  
 10 A. That would be the  
 11 administration. Here I was thinking  
 12 about -- again, just thinking about  
 13 passing out fliers to parents as they  
 14 drove their children to the dorms and say  
 15 here, here's what's going on at the  
 16 college, at the university.  
 17 Q. As of December 15, 2001(sic),  
 18 have you decided to create the Hitler  
 19 videos?  
 20 A. I don't think so. I don't see  
 21 anything here. I'm not sure when I got  
 22 that idea.  
 23 ---  
 24 (At this time, a document was

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1 Is that who you're referring  
 2 to?  
 3 A. Let's see, yes.  
 4 Q. Okay.  
 5 And you have a toy dog labeled  
 6 CO or Oliveri, so the dog would be labeled  
 7 for Carl Oliveri?  
 8 A. Yes.  
 9 Q. Okay.  
 10 And the dog lifts his leg to  
 11 pee on a poster which is on the ground?  
 12 A. Yes.  
 13 Q. The poster will be a little  
 14 crumpled and torn at the lying base of a  
 15 tree and the only word you can see is  
 16 FIRE, so the dog is pissing on FIRE to put  
 17 it out; is that right?  
 18 A. Yes.  
 19 Q. Okay.  
 20 And then you -- couple  
 21 paragraphs later you say to Pam but the  
 22 next best thing -- strike that.  
 23 You say meanwhile, I'm  
 24 beginning to learn how to use Windows

46 (Pages 178 to 181)

Page 182

1 Movie Maker just well enough so I can make  
 2 a Hitler parody video.  
 3 Do you see that?  
 4 A. Yes, I do.  
 5 Q. So is it fair to say around  
 6 December 19th you at least have the idea?  
 7 A. Yes.  
 8 Q. With luck, this will all come  
 9 together and the semester off to a rousing  
 10 start.  
 11 Do you see that?  
 12 A. Yes.  
 13 Q. What do you mean by rousing  
 14 start?  
 15 A. Get students on campus  
 16 interested in the issue of free speech and  
 17 say what the heck's going on at this  
 18 university.  
 19 Q. Okay.  
 20 If no one is roused, at least  
 21 I, in parentheses we with your help,  
 22 closed parentheses, will have tried and at  
 23 least caused some discomfort.  
 24 Do you see that?

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1 A. Yes.  
 2 Q. Who were you trying to cause  
 3 discomfort to?  
 4 A. The administration, hoping they  
 5 would change their policies.  
 6 Q. And, again, this is all about  
 7 the poster?  
 8 A. Yes.  
 9 Q. Okay.  
 10 You write this is all good,  
 11 ideally policy changes, but next best is  
 12 to make them pay something, and then in  
 13 bold italicized, at least cause some  
 14 discomfort.  
 15 A. Uh-huh.  
 16 Q. Again, discomfort to Marywood  
 17 administration?  
 18 A. Yes.  
 19 Q. And that would be the purpose  
 20 at least of this video?  
 21 A. The main purpose of the video  
 22 would be to change policy.  
 23 Q. And another purpose was to  
 24 create discomfort?

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1 A. If by discomfort that  
 2 encouraged them to change policy, then  
 3 that would be okay.  
 4 ---  
 5 (At this time, a document was  
 6 marked for identification as Exhibit  
 7 Fagal-15.)  
 8 ---  
 9 BY MS. PEET:  
 10 Q. Okay.  
 11 This is a packet of documents.  
 12 It starts off with an e-mail with various  
 13 attachments.  
 14 Do you see this?  
 15 A. Yes.  
 16 Q. Now, the e-mail on the first  
 17 page where it says forwarded message, it's  
 18 from Fred Fagal to your Gmail account  
 19 dated January 13, 2012.  
 20 Do you see that?  
 21 A. Yes, I see that.  
 22 Q. Okay.  
 23 So you're sending an e-mail  
 24 from your Yahoo account to your Gmail

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1 account, correct?  
 2 A. Okay, yeah.  
 3 Q. And then it says dear Marywood  
 4 University faculty colleague.  
 5 Do you see that?  
 6 A. Uh-huh.  
 7 Q. Are there -- are you blind  
 8 copying people on this e-mail?  
 9 A. I don't recall if it was blind  
 10 copying or I had about -- I had access to  
 11 e-mail addresses and I was able to paste a  
 12 certain number of them in to send out as a  
 13 batch e-mail. So these are faculty  
 14 members now, so that's what I did.  
 15 Q. Okay.  
 16 So you agree you sent out this  
 17 e-mail to Marywood faculty members,  
 18 correct?  
 19 A. Yes.  
 20 Q. Did you send it to the faculty  
 21 members at their personal e-mail addresses  
 22 or at their Marywood e-mail addresses?  
 23 A. Whatever e-mail addresses I  
 24 had, so it was probably mixed perhaps. I

47 (Pages 182 to 185)

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1 don't know.  
 2 Q. So for at least some faculty,  
 3 it went to their Marywood e-mail address?  
 4 A. That's correct.  
 5 Q. Did you send it to any  
 6 students?  
 7 A. Geri Smith might have gotten a  
 8 copy because she was intimately involved.  
 9 Q. And she would have been a  
 10 student, correct?  
 11 A. She would have been a student.  
 12 I --  
 13 Q. Would you have sent it to Geri  
 14 at her personal e-mail address or at her  
 15 Marywood e-mail address?  
 16 A. Personal, I believe.  
 17 Q. Do you know one way or the  
 18 other?  
 19 A. I'm not sure.  
 20 Q. So it's possible you sent it to  
 21 her at her Marywood e-mail address?  
 22 A. I could give you a probability.  
 23 Q. But you'd be guessing?  
 24 A. But I'd be guessing.

Page 187

1 Q. Okay.  
 2 So it's possible one way or the  
 3 other?  
 4 A. It's possible one way or the  
 5 other.  
 6 Q. Okay.  
 7 Where were you when you sent  
 8 this e-mail?  
 9 A. I don't know for sure.  
 10 Q. If it helps, it's 2:31 p.m. on  
 11 a Friday in January.  
 12 A. Right. So either -- I'm not  
 13 sure when my last class was. It takes me  
 14 about two hours to drive home. So if my  
 15 last class was at -- ended at 11:50, you  
 16 know, it's possible I could have sent this  
 17 from home. It's possible I could have  
 18 sent this from my office.  
 19 Q. Is your office at Marywood  
 20 University on the campus?  
 21 A. Yes. It's also possible I did  
 22 not use the Marywood, you know, Wi-Fi or  
 23 cable.  
 24 Q. And do you know one way or the

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1 other?  
 2 A. I'm not sure. At the time, I  
 3 could tell you I had a tether program on  
 4 my computer and it was working pretty well  
 5 with my cell phone to get Internet access,  
 6 and sometimes I would -- so I would use  
 7 that sometimes in my office also.  
 8 Q. Okay.  
 9 As we sit here today, do you  
 10 know one way or the other whether you  
 11 used --  
 12 A. No.  
 13 Q. -- a tether? Okay.  
 14 Just to make sure we're clear,  
 15 this right here is the e-mail that you  
 16 sent to members of Marywood community  
 17 including the two hyperlink videos that  
 18 you created, correct?  
 19 A. I'll say no. Community -- I  
 20 would say faculty.  
 21 Q. Well, Geri Smith is not  
 22 faculty, correct?  
 23 A. True.  
 24 Q. Okay.

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1 Did you post -- did you create  
 2 the Hitler videos?  
 3 A. Yes.  
 4 Q. Did you post them on YouTube?  
 5 A. Yes.  
 6 Q. Were they publically available  
 7 or did you need to enter a password to  
 8 view the videos?  
 9 A. No password. They were  
 10 publically available.  
 11 Q. Did you have to receive your  
 12 e-mail in order to view the videos or  
 13 could anyone have viewed those videos?  
 14 A. Anyone could have viewed them.  
 15 The question is would they have found them  
 16 without the information.  
 17 Q. Okay.  
 18 But they did not need to be  
 19 invited to watch the videos, correct?  
 20 A. Correct.  
 21 Q. Did anyone help you draft this  
 22 e-mail?  
 23 A. Draft this e-mail, no.  
 24 Q. Okay.

48 (Pages 186 to 189)

Page 190

1 You write towards the bottom,  
2 it says based on the evidence.

3 Do you see that?

4 A. Yes.

5 Q. I expect most of you, if only  
6 in private, will agree the Marywood  
7 administration, real people here, not an  
8 abstraction, exhibited egregious,  
9 despicable, contemptible behavior.

10 What's the behavior you're  
11 talking about here?

12 A. Tearing down my posters.

13 Q. And when you write this  
14 poisoned and considered, exclamation mark,  
15 behavior reflects badly on everyone  
16 associated with Marywood, is that again  
17 referring to the poster issue?

18 A. Yes.

19 Q. Okay.

20 If you turn to the second page,  
21 you have number three. You talk about the  
22 letter that you sent to Dr. Levine dated  
23 December 5th that we already talked about  
24 earlier today.

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1 Do you remember that?

2 A. Yes.

3 Q. And you mention in this twice  
4 that you refer to these as demands.

5 Do you see that?

6 A. Yes, but I would note there's a  
7 question mark after demands and the first  
8 word is "requests". You see --

9 Q. It says requests, open parens,  
10 demands, question mark, end parens,  
11 correct?

12 A. Yes.

13 Q. And then the second demand  
14 doesn't have a question mark and it's not  
15 in quotation marks, correct?

16 A. Correct.

17 Q. Okay.

18 Then if you go down a little  
19 bit, you say Corynne McSherry, an attorney  
20 specializing in intellectual property  
21 stated, and then she said something about  
22 the Downfall movie.

23 Do you see that?

24 A. Let's see. I'm looking.

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1 Q. It starts --

2 A. Yes, I see that.

3 Q. Did you reach out or speak with  
4 Corynne McSherry?

5 A. No.

6 Q. Did you speak to any  
7 intellectual property lawyer?

8 A. No.

9 Q. Did you ever get approval from  
10 anyone to use the Downfall movie?

11 A. No.

12 Q. Next paragraph, you talk about  
13 comments that you got from pre-release  
14 viewers.

15 Do you see that?

16 A. Yes.

17 Q. Who are they?

18 A. Rod Carveth I know saw them.

19 What's his name? Let's see. Bill

20 Ziegelbauer saw them. I believe Geri

21 Smith saw them. I'm trying to remember.

22 I'm drawing a blank, the name of the man

23 in our department who taught some

24 economics after I left, I think. He saw

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1 them. Pam Parsons saw them. I believe my  
2 dental hygienist saw them. I can't  
3 remember anybody else right now.

4 Q. Okay.

5 By the way, did you pay Geri  
6 Smith to hang up the posters?

7 A. No.

8 Q. Did you pay anyone to hang up  
9 the posters?

10 A. Yes.

11 Q. Who did you pay?

12 A. I can't remember his name. A  
13 student in my -- I believe it was 12:00  
14 economics class.

15 Q. How much did you pay him?

16 A. I believe it was \$5.00.

17 Q. How long did it take him?

18 A. I don't know.

19 Q. Was that approved by Marywood  
20 University?

21 A. Was what approved by Marywood  
22 University?

23 Q. The payment to a student.

24 A. No.

49 (Pages 190 to 193)



Page 194

1 Q. You include various comments  
2 from your -- the pre-release viewers. One  
3 of the comments is in quotations, it was  
4 nice knowing you, Fred.  
5 A. Yes.  
6 Q. Who said that?  
7 A. Again, I'm drawing a blank on  
8 the name. I know -- I know the name. He  
9 worked in our social science department  
10 but he saw the videos and -- Larry Walsh  
11 is his name, so that's his comment.  
12 Q. Okay.  
13 Fair to say that he thought it  
14 was not a good idea?  
15 A. Yes. Well, in terms of --  
16 Q. What it can do for your  
17 career --  
18 A. What it could do for my  
19 career --  
20 Q. -- at Marywood?  
21 A. -- at Marywood.  
22 Q. Was he trying to say that  
23 perhaps this would be the end of your  
24 career at Marywood?

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1 A. I think he was trying to say  
2 that, yes.  
3 Q. Okay.  
4 Who's Rod Carveth?  
5 A. Former professor at Marywood.  
6 Q. In January of 2012, was  
7 Mr. Carveth a professor at Marywood?  
8 A. No.  
9 Q. Do you remember -- do you know  
10 the name of your dental hygienist that you  
11 sent it to?  
12 A. Yes.  
13 Q. What's her name?  
14 A. Kim Mingess(ph).  
15 Q. Why did you send it to her?  
16 A. Because I had a dentist  
17 appointment for my checkup and I had a  
18 tooth cleaning. I saw my dentist that  
19 same day, and so I was talking with my --  
20 my dentist asked me how things are going  
21 and I told him the quick story, and Kim  
22 listened. She seemed interested, so I  
23 said I'll send you a copy of the video.  
24 Q. Did you send it to your dentist

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1 as well?  
2 A. No.  
3 Q. If you can go to the next page,  
4 there are two hyperlinks to YouTube.  
5 Are those the videos? If I  
6 would click on link to video number one --  
7 A. Uh-huh.  
8 Q. If I clicked on that, would  
9 that direct me to YouTube and direct me to  
10 your video?  
11 A. When?  
12 Q. In January of 2012.  
13 A. Yes.  
14 Q. If I clicked on the link to  
15 video number two, would that direct me to  
16 YouTube in January 2012 with your video?  
17 A. Yes.  
18 Q. You then say a few colleagues  
19 concerned for my welfare have told me they  
20 fear the administration will try and fire  
21 me over this.  
22 Who are those few colleagues?  
23 A. Larry Walsh was one of them. I  
24 can't right now remember who the other one

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1 was.  
2 Q. Is it possible there were more  
3 since you wrote a few colleagues?  
4 A. We're talking two or three  
5 here. It may be, not many.  
6 Q. Okay.  
7 You say -- and, again, these  
8 are pre-release viewers, correct?  
9 A. Yes.  
10 Q. Then you say one colleague says  
11 perhaps I should have asked for an  
12 appointment with President Munley and made  
13 a final appeal, that is I should have  
14 pursued every last ditch channel possible.  
15 You testified you did not do  
16 that, correct?  
17 A. That's correct. I did not  
18 pursue an appointment with Professor  
19 Munley -- or President Munley.  
20 Q. And what -- who -- what  
21 colleague was the one that suggested you  
22 do that?  
23 A. I don't know for sure.  
24 Q. Okay.

50 (Pages 194 to 197)

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1 Who do you think it is?  
 2 A. I think it was Larry Walsh but  
 3 I wouldn't testify to that.  
 4 Q. Okay.  
 5 Then you said I did not want to  
 6 go into such a meeting and in essence have  
 7 as the only new point to raise, quote, a  
 8 blackmail, end quote, threat to go public  
 9 as I do here and in the videos.  
 10 Do you believe these videos are  
 11 blackmail?  
 12 A. No.  
 13 Q. Okay.  
 14 You say if the risk to me is  
 15 there, it is there, semicolon, and if the  
 16 worst does come to pass, I will have to  
 17 battle as best as I can with the support  
 18 of family, and friends, and colleagues,  
 19 and perhaps concerned outsiders.  
 20 What was the worst does come to  
 21 pass? Would that be your termination of  
 22 employment from Marywood?  
 23 A. Yes.  
 24 Q. So you realized that that was a

1 coolcat@hotmail.com, and send it from  
 2 anywhere but Marywood.  
 3 Do you see that?  
 4 A. Yes, I do.  
 5 Q. And that's because Marywood has  
 6 a computer policy, correct?  
 7 A. Correct.  
 8 Q. If you turn to the next page  
 9 very much towards the end, it is  
 10 transparently obvious Marywood University  
 11 is discriminating against Professor Fagal;  
 12 Your Honor, I rest my case.  
 13 Do you see that?  
 14 A. Yes.  
 15 Q. So do you believe you're -- you  
 16 were being discriminated against?  
 17 A. I don't know that -- I'm not  
 18 sure how we define the word  
 19 "discriminating" here.  
 20 Q. You wrote this, right?  
 21 A. Yes, I did.  
 22 Q. Okay.  
 23 A. I believe that at the time that  
 24 they were -- the administration was

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1 possible alternative when you posted these  
 2 videos?  
 3 A. I had been warned that it might  
 4 be, yes.  
 5 Q. And you understood that by  
 6 doing this, this might be the end of your  
 7 employment with Marywood?  
 8 A. I understood that it was a  
 9 risk.  
 10 Q. Okay.  
 11 You then say, in all caps,  
 12 beware, dash, according to page 86 of the  
 13 faculty handbook, you then quote there are  
 14 no specific laws, comma, rules, comma, or  
 15 regulations that protect the privacy of a  
 16 user's files, comma, electronic mail  
 17 messages, comma, or any other information  
 18 retrieved as a result of person's session  
 19 on the Marywood system, period, end quote.  
 20 A. Yes.  
 21 Q. You then say thus, if you  
 22 e-mail me and want to protect yourself,  
 23 you might best use a backup e-mail address  
 24 such as your old youthful one,

1 perhaps looking to interfere with things I  
 2 might do on campus that they didn't like.  
 3 Q. Okay.  
 4 Well, you wrote it is  
 5 transparently obvious --  
 6 A. And so I would say -- yeah.  
 7 And so I would say that based -- based on  
 8 my recounting of the posters story and the  
 9 pandering phrase before that, when  
 10 Marywood itself was giving out Visa cards  
 11 and whatnot at events for people to come  
 12 to class that they were discriminating  
 13 against me as opposed to other professors  
 14 who would send students to an evening  
 15 class where students could get a prize or  
 16 food.  
 17 Q. Okay.  
 18 Do you believe you were being  
 19 discriminated against?  
 20 A. Yes, I did.  
 21 Q. Based on what protective  
 22 status?  
 23 A. I was not considering this as a  
 24 legal phrase.

51 (Pages 198 to 201)

Page 202

1 Q. Okay.  
 2 You didn't sue for  
 3 discrimination, correct?  
 4 A. No.  
 5 Q. Did you -- are the videos still  
 6 posted on YouTube?  
 7 A. No.  
 8 Q. Why not?  
 9 A. Why not?  
 10 MR. COHEN: Without disclosing  
 11 any attorney-client communication.  
 12 THE WITNESS: What did you say  
 13 there?  
 14 MR. COHEN: I said without  
 15 disclosing any attorney-client  
 16 communication.  
 17 THE WITNESS: Without  
 18 disclosing any attorney-client  
 19 communication.  
 20 It was just a gesture to take  
 21 them down. They -- I guess they had  
 22 served their purpose. I made  
 23 certainly enough of a point to get  
 24 suspended and termination

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1 recommended.  
 2 BY MS. PEET:  
 3 Q. What purpose did they serve?  
 4 A. What purpose did the videos  
 5 serve? Is that --  
 6 Q. You said they served their  
 7 purpose, so I'm saying what purpose did  
 8 they serve.  
 9 A. They publicized the posters  
 10 events.  
 11 Q. Did you post them on anything  
 12 other than YouTube?  
 13 A. No.  
 14 Q. When did you take them off of  
 15 YouTube?  
 16 A. I can give an approximate date.  
 17 I would say it was around the end of  
 18 February 2012.  
 19 Q. We're going to watch the  
 20 videos.  
 21 ---  
 22 (At this time, videos were  
 23 played.)  
 24 ---

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1 BY MS. PEET:  
 2 Q. Those videos you created?  
 3 A. Yes.  
 4 Q. Anyone help you?  
 5 A. Yes.  
 6 Q. Who?  
 7 A. Bill Ziegelbauer helped a  
 8 little bit.  
 9 Q. Anyone else?  
 10 A. No.  
 11 Q. As we sit here today, do you  
 12 have any remorse for doing that?  
 13 A. I remorse that I lost my job.  
 14 Q. Do you have any remorse for  
 15 creating those videos and depicting Sister  
 16 Anne Munley as Adolf Hitler who killed six  
 17 million Jews?  
 18 A. I would say that instead of  
 19 depicting Anne Munley as Hitler -- in  
 20 other words, think of Anne Munley doing  
 21 Hitler stuff in the 1930s or '40s as being  
 22 -- let's say a newsreel. You took the  
 23 newsreel and you superimposed Anne Munley  
 24 into that newsreel, then Anne Munley would

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1 be portraying Hitler.  
 2 In this case, it's more a  
 3 question of an actor dressed as Adolf  
 4 Hitler portraying Anne Munley, and under  
 5 her direction some fascist type  
 6 activities, namely tearing down posters,  
 7 were done; therefore, the satire parody.  
 8 Absolutely no intention to cause anyone to  
 9 think that -- and I don't think anyone  
 10 would think that I was in any way implying  
 11 that Anne Munley would do horrible things  
 12 like Hitler did in terms of killing six  
 13 million Jews.  
 14 Q. In the video, there's an actor  
 15 obviously portraying Adolf Hitler?  
 16 A. Yes.  
 17 Q. Is that Sister Munley in the  
 18 video?  
 19 A. He is portraying Sister Munley,  
 20 again.  
 21 Q. And other members of Marywood's  
 22 administration, they're being depicted as  
 23 members of the Nazi regime, correct?  
 24 A. Mostly in a vague

52 (Pages 202 to 205)

Page 206

1 unidentifiable sense.

2 Q. Are they being identified as  
3 members of the Nazi regime?

4 A. No, because I would say again  
5 that members of the Nazi regime are  
6 portraying the Marywood personnel.

7 Q. So the members of the Nazi  
8 regime are various members of Marywood  
9 administration, correct, in your video?

10 A. The point of the satire is  
11 to --

12 Q. That's not my question.

13 A. Okay. Say it again.

14 Q. Strike as nonresponsive.

15 A. Okay.

16 Q. This is a video --

17 A. Yes.

18 Q. -- correct?

19 A. Correct.

20 Q. And the original video depicts  
21 Adolf Hitler and members of the Nazi  
22 regime, correct? They are actors  
23 nonetheless because --

24 A. The video Downfall -- the

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1 A. I would have to measure that  
2 answer in hours and I would have to  
3 estimate. I'd have to think to come up  
4 with a good answer.

5 Q. Okay.

6 A. Many hours.

7 Q. Many?

8 A. Yes.

9 Q. More than 10?

10 A. Yes.

11 Q. More than 20?

12 A. Yes.

13 Q. More than 30?

14 A. Probably.

15 Q. More than 40?

16 A. Probably not.

17 Q. Did you ever work on it in your  
18 office on campus?

19 A. No.

20 Q. Did you only work on it in your  
21 home?

22 A. Yes.

23 Q. There's someone in the video  
24 that's spelled L-E-V-I-N-E.

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1 Downfall movie depicts actors as members  
2 of the Nazi regime.

3 Q. Okay.

4 Various members of the Nazi  
5 regime in the video are various members of  
6 Marywood administration, correct, in your  
7 video?

8 A. In my video, those actors are  
9 standing in for Marywood personnel.

10 Q. When did you start creating  
11 these videos?

12 A. Right around that December -- I  
13 was learning how to use the software and  
14 whatnot. Somewhere around December 20th,  
15 21st, just before Christmas.

16 Q. I'm not sure you responded to  
17 the question, so if you did, my apologies.

18 But as we sit here today, are  
19 you remorseful that you did that? And by  
20 that, I mean creating these two videos.

21 A. No.

22 Q. Okay.

23 How long did it take you to  
24 create them?

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1 A. Correct.

2 Q. Is that supposed to be Alan  
3 Levine?

4 A. Yes and no.

5 Q. Did you change his name?

6 A. Yes.

7 Q. Why did you do that?

8 A. I wanted to make it be a French  
9 name, Levine, that's why I emphasized the  
10 V-I-N-E to make it clear that it was  
11 nothing at all about what -- some people  
12 might say Levine was a Jewish name, and  
13 that's -- I wanted to make it clear that I  
14 was not affiliating Alan Levine with any  
15 connotation.

16 Q. Well, do you think people would  
17 be offended if they saw a Hitler movie and  
18 a Jewish person was a member of a Nazi  
19 regime or depicted as a member of a Nazi  
20 regime?

21 A. I realize that some people  
22 could be offended and have the right to be  
23 offended.

24 Q. Do you understand how people

53 (Pages 206 to 209)

Page 210

1 that watch that video could be offended?

2 A. That's -- I can't under -- I  
3 mean I can understand that they are. I  
4 don't understand in the context here why  
5 they would be.

6 Q. Did you watch those videos?

7 A. Yes, I did.

8 Q. Okay.

9 A. Uh-huh.

10 Q. And you don't see how someone  
11 that watches that could be offended by  
12 what you just did?

13 A. I do understand that they could  
14 be offended.

15 Q. For the people that watched it  
16 pre-release, how did they get access to  
17 it?

18 A. Some I showed on my laptop and  
19 a few people I e-mailed low quality video  
20 files.

21 Q. Where did you e-mail them?

22 A. Can you rephrase the question?

23 Q. Where was it that you -- how  
24 was it that you e-mailed it to them? Was

Page 212

1 Q. The rape part?

2 A. A substory.

3 Q. Yeah.

4 A. There was no rape.

5 Q. So the rape part was meant to  
6 be comical?

7 A. The rape part was meant to be  
8 comical.

9 Q. Okay.

10 When you talk about the hot  
11 young pretty thing --

12 A. Excuse me. Can I amplify a  
13 little bit?

14 There was no rape. There was  
15 some supposed humorous non-existent plot  
16 to have the Fagal character be seduced and  
17 then claim rape. So there was never a  
18 rape, and of course there was never such a  
19 plot, and there was never such a  
20 seduction, and I don't think anybody would  
21 have thought that to be the case.

22 Q. Do you think when someone is  
23 watching this video and they're talking  
24 about rape, do you think someone can get

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1 it to their personal e-mail accounts or to  
2 their Marywood e-mail accounts to those  
3 that are affiliated with Marywood?

4 A. I don't recall e-mailing it to  
5 anybody at Marywood -- at a Marywood  
6 account.

7 Q. For the pre-release, correct?

8 A. For the pre-release.

9 Q. You talk in your video about  
10 rape.

11 Are you suggesting that they  
12 would try and frame you and have you  
13 seduce a young woman and then have that  
14 person call rape and then so they can fire  
15 you? Is that what you were implying?

16 A. No.

17 Q. What were you implying when you  
18 were talking rape?

19 A. I wasn't implying anything.

20 Q. Okay.

21 A. It was a humorous satire part  
22 of the video.

23 Q. The rape --

24 A. A sub --

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1 offended by that or think it's  
2 inappropriate?

3 A. Anybody could be offended by  
4 anything.

5 Q. Including these videos,  
6 correct?

7 A. If they choose to be.

8 Q. The hot young pretty thing that  
9 you're referencing, would that be  
10 Dr. Levine's wife?

11 A. What was the exact quote? I  
12 don't know if that's the exact quote. I  
13 have the -- we had -- I had the scene by  
14 scene.

15 Q. Well, since you mention it, we  
16 have the scene by scene as well.

17 A. Where I made comments in each  
18 scene.

19 ---

20 (At this time, a document was  
21 marked for identification as Exhibit  
22 Fagal-16.)

23 ---

24 BY MS. PEET:

54 (Pages 210 to 213)

Page 214

1 Q. First off, what has been marked  
2 as Exhibit-16, are these the frames from  
3 the video that we just showed?

4 A. They certainly appear to be.

5 Q. Okay.

6 A. Very grainy, but yes.

7 Q. If you flip to DEF136, it's  
8 towards the end. Some member of the Nazi  
9 regime slash Marywood administrator is  
10 saying so you wanted a hot young thing,  
11 now you pay.

12 Do you see that?

13 A. Yes, I do.

14 Q. And they're directing this to  
15 the character that's portraying  
16 Dr. Levine, correct?

17 A. Yes.

18 Q. And is that referring to --  
19 that hot young thing, would that be  
20 Dr. Levine's wife that you're referring  
21 to?

22 A. Yes.

23 Q. Do you think Dr. Levine might  
24 find that offensive?

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1 his one percent kids need money. That's a  
2 joke reference to the Occupy Wall Street  
3 movement that was going on at the time,  
4 and so that I would say makes this, you  
5 know, be a joke.

6 And the next scene where you  
7 say so you wanted a hot young thing, now  
8 you pay, you know, there's Hot in  
9 Cleveland, the television show that was  
10 very popular at the time. The term "hot"  
11 is a very general term. It means, you  
12 know, attractive.

13 So could Dr. -- your question  
14 is could Dr. Levine be offended? He could  
15 be if he wanted to.

16 Q. Do you think this might be  
17 offensive to Dr. Levine's second wife?

18 A. I personally don't see why it  
19 would be.

20 Q. Have you ever posted anything  
21 else on YouTube about Marywood University?

22 A. No.

23 Q. Did you ever consult with an  
24 attorney about this video before you

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1 A. I don't know whether he would.  
2 This is satire comedy parody. If I may  
3 refer to the previous scene, the Levine  
4 character says I should quit as VP and be  
5 a professor again, but my young wife  
6 number two and one percent kids need  
7 money. So here Dr. Levine is making a  
8 joke. It's understood through common  
9 knowledge that Dr. Levine had been  
10 divorced and married again.

11 Q. When you say Dr. Levine is  
12 making a joke, let's be abundantly clear  
13 here. It's Dr. Fagal --

14 A. Yes, but in the --

15 Q. -- making a joke about  
16 Dr. Levine, correct? Dr. Levine did not  
17 make this joke, correct?

18 A. That's correct. The character  
19 in the movie representing Dr. Levine is  
20 making a joke about his situation. He's  
21 got a second family to support and all  
22 this turmoil. He could go back to be a  
23 professor at a lower pay rate but his wife  
24 might not appreciate the lower salary and

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1 posted it?

2 A. No.

3 Q. Ever consider not posting this  
4 video after you prepared it and watched  
5 it?

6 A. I don't recall. I did listen  
7 to Larry Walsh if he offered his opinion.

8 Q. Was he the only person that  
9 provided commentary to the effect that you  
10 could be terminated if you do this?

11 A. He's the only one I can recall  
12 at this moment.

13 Q. Did you show it to your wife  
14 before you posted it?

15 A. Yes.

16 Q. Was she in agreement that you  
17 should do this?

18 A. She was wondering if I would  
19 get in trouble about it and she didn't  
20 want all that, and I told her it's  
21 something I had to do, and she said fine.

22 Q. When you say you had to do it,  
23 no one at Marywood asked you to do this,  
24 correct?

55 (Pages 214 to 217)

Page 218

1 A. No.  
 2 Q. When you had to do it, it was a  
 3 decision that you --  
 4 A. My personal decision.  
 5 Q. -- personally made --  
 6 A. Right.  
 7 Q. -- correct?  
 8 And when you say your wife  
 9 didn't want any trouble, would that imply  
 10 a termination of your employment?  
 11 A. It could be anything. Just  
 12 being called in on the carpet, just the  
 13 stress of ongoing back and forth that had  
 14 already been going on for months. So...  
 15 Q. What is your personal opinion  
 16 of Adolf Hitler?  
 17 MR. COHEN: Can you repeat  
 18 that?  
 19 MS. PEET: What is his personal  
 20 opinion of Adolf Hitler?  
 21 THE WITNESS: A horrible human  
 22 being.  
 23 BY MS. PEET:  
 24 Q. Why is he a horrible human

Page 219

1 being in your opinion?  
 2 A. He was a ruthless dictator who  
 3 did all sorts of bad things.  
 4 Q. Such as?  
 5 A. Such as Kristallnacht, such as  
 6 putting Jews in concentration camps, such  
 7 as going after anybody who spoke out  
 8 against him, such as mentioned in the  
 9 video beheading the white -- what is it,  
 10 the white flower protesters, concentration  
 11 camps, war crimes.  
 12 Q. In your opinion, do you think  
 13 someone would be fond of being associated  
 14 with Adolf Hitler?  
 15 A. Fond, no.  
 16 Q. Do you think someone would be  
 17 fond or think favorably if they were being  
 18 associated with a Nazi?  
 19 A. No, but let me -- not all Nazi  
 20 behaviors were equivalently bad. So if  
 21 somebody said you tore down the posters  
 22 like a Nazi would, well, that's a  
 23 descriptive term. That's -- if you did  
 24 it, you did it. It's a comparison.

Page 220

1 Q. Did it ever cross your mind  
 2 that you were depicting a member of the  
 3 Jewish faith as a Nazi?  
 4 MR. COHEN: Can you repeat  
 5 that?  
 6 BY MS. PEET:  
 7 Q. Did it ever cross your mind  
 8 that you were depicting a member of the  
 9 Jewish faith as a Nazi?  
 10 A. Well, it crossed my mind  
 11 because I changed the name to Levine and I  
 12 wanted to make it clear that Alan Levine  
 13 -- I didn't really consider him to be my,  
 14 quote/unquote, enemy.  
 15 Q. Although you changed the name,  
 16 the person that you're depicting is  
 17 Dr. Alan Levine, correct?  
 18 A. Yes.  
 19 Q. Okay.  
 20 A. I mean -- yes.  
 21 Q. Do you think the videos are  
 22 professional?  
 23 A. What do you mean by  
 24 professional?

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1 Q. Do you think it was a  
 2 professional thing to do as a tenured  
 3 professor at Marywood University?  
 4 A. Well, as part of my professor's  
 5 job is to seek, you know, open expression  
 6 and free inquiry, and I was inquiring as  
 7 to what had happened. And so I didn't  
 8 think it was out of the ordinary for some  
 9 college professors to speak up in a case  
 10 like this.  
 11 Q. Do you think it was  
 12 professional?  
 13 A. I don't have an opinion really.  
 14 Q. Can you understand how some  
 15 people would find it to be unprofessional?  
 16 A. Again, I'm not sure what you  
 17 mean by unprofessional. You say, oh, that  
 18 wasn't a polite thing to do. I could  
 19 understand why some people wouldn't think  
 20 it was polite. Unprofessional, I really  
 21 don't have a good answer for that.  
 22 Q. What about inappropriate  
 23 conduct from a tenured professor?  
 24 A. I wouldn't say what I did was

56 (Pages 218 to 221)

Page 222

1 inappropriate given the circumstances.

2 Q. And the circumstances being --  
3 you're talking about the posters?

4 A. That's correct.

5 MS. PEET: Why don't you change  
6 the video.

7 ---

8 THE VIDEOGRAPHER: We're now  
9 off the record. The time is 2:36  
10 p.m. This ends disk number two.

11 ---

12 (At this time, a short break  
13 was taken.)

14 ---

15 THE VIDEOGRAPHER: We are now  
16 on the record. The time is 2:43 p.m.  
17 This starts disk number three.

18 ---

19 (At this time, a document was  
20 marked for identification as Exhibit  
21 Fagal-17.)

22 ---

23 BY MS. PEET:

24 Q. Exhibit-17 seems to be e-mail

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1 correct?

2 A. Let me see.

3 Q. Down at the bottom.

4 A. Yes. He -- yes. Uh-huh.

5 And, yes, I see that -- I say  
6 what is your best time for Republican  
7 Conservative Club meeting, so he was -- he  
8 would have been a student.

9 Q. Thank you.

10 ---

11 (At this time, a document was  
12 marked for identification as Exhibit  
13 Fagal-18.)

14 ---

15 BY MS. PEET:

16 Q. Is one of the people that you  
17 sent the e-mail to with the videos Kevin  
18 Wyllie?

19 A. I presume he's on that e-mail  
20 list, yes.

21 Q. Okay.

22 And who is Kevin?

23 A. I don't know for sure, but I  
24 looked him up after I got this and he was

Page 223

1 exchange between you and Benjamin  
2 Harrington.

3 Do you see that?

4 A. Yes.

5 Q. Was Benjamin Harrington at this  
6 time, January of 2012, a student at  
7 Marywood?

8 A. I believe he was registered for  
9 the spring semester though I don't know  
10 that for sure.

11 Q. Well, you sent it to him at his  
12 Marywood --

13 A. That's correct.

14 Q. -- .edu e-mail address --

15 A. That's correct.

16 Q. -- is that correct?

17 A. That's correct.

18 Q. So he's not a faculty member,  
19 correct?

20 A. No.

21 Q. He was a student, correct?

22 A. Correct.

23 Q. And you were telling him to go  
24 to YouTube to look at those videos,

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1 on the member of the faculty on arc --  
2 school of architecture.

3 Q. Kevin wrote to you that he  
4 understands your concern, but this type of  
5 mass e-mail seems a little inflammatory  
6 and unprofessional.

7 Do you see that?

8 A. Yes.

9 Q. Do you disagree with what he  
10 wrote?

11 A. I would -- I would agree with  
12 the a little inflammatory part and I would  
13 disagree with the unprofessional part.

14 Q. Okay.

15 But, nonetheless, it's a  
16 colleague of yours at Marywood telling you  
17 that he found it to be unprofessional,  
18 correct?

19 A. He said it seems  
20 unprofessional.

21 Q. Okay.

22 A. Right.

23 Q. And he also said it seems like  
24 you're having a tantrum.

57 (Pages 222 to 225)



Page 226

1 A. He said that it seems to be a  
2 tantrum.  
3 Q. He writes although the freedom  
4 to protest is a valuable democratic  
5 exercise, it should not become a source of  
6 fashionable entertainment.

7 Do you see that?

8 A. I do.

9 Q. Do you disagree with what he  
10 wrote?

11 A. Yes.

12 Q. Did you receive this e-mail  
13 from Kevin?

14 A. Yes.

15 - - -

16 (At this time, a document was  
17 marked for identification as Exhibit  
18 Fagal-19.)

19 - - -

20 BY MS. PEET:

21 Q. Did you prepare Exhibit-19?

22 A. Yes.

23 Q. What is it?

24 A. I believe that I prepared this

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1 if he shared it with counsel?

2 MS. PEET: It would include  
3 counsel.

4 MR. COHEN: Okay.

5 MS. PEET: Sure.

6 BY MS. PEET:

7 Q. I'm not -- I didn't ask for  
8 what any attorney's views are or what they  
9 spoke about, but my question was did you  
10 share this document with anyone after you  
11 created it?

12 A. I sent it to the -- I believe  
13 -- quite sure I recall that I sent it to  
14 the -- one of the committees, like the ad  
15 hoc committee that was considering my  
16 case, the faculty committee, and I sent it  
17 to them but I did not distribute this to  
18 the faculty or anything like that.

19 Q. Did you share it with anyone  
20 else other than the ad hoc committee?

21 A. I might have sent it to Bill  
22 Ziegelbauer and a few people but not -- I  
23 can't recall right now.

24 Q. Who were the other few people?

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1 in the -- after January 23rd after I had  
2 been suspended and after I had heard the  
3 concerns expressed by President Munley and  
4 about how terrible the video was, and so I  
5 decided I would go through each screen and  
6 copy the words exactly -- all the words in  
7 the video exactly as they were and I would  
8 try to, shall we say, footnote each set of  
9 comments that were in the video to explain  
10 further where they came from, what the  
11 relationship to, say, a history reference  
12 was and things like that.

13 Q. Did anyone help you prepare  
14 this?

15 A. No.

16 Q. Did you share it with anyone?

17 MR. COHEN: Without disclosing  
18 any -- other than --

19 MS. PEET: I didn't ask about  
20 communications. I just said did you  
21 share it with anyone, and that would  
22 include counsel.

23 THE WITNESS: I --

24 MR. COHEN: Wait, you're asking

Page 229

1 A. I might have sent it to my  
2 sisters. I can't recall. I don't  
3 remember sending it to anybody other than  
4 the committee.

5 Q. And was the purpose of creating  
6 this to give it to the ad hoc committee?

7 A. I believe the original purpose  
8 was for myself. I wanted to, shall we  
9 say, convince myself that I wasn't crazy  
10 and -- but I really wanted to explain to  
11 anybody who wanted to know why this scene,  
12 why that, I wanted to be able to have a  
13 record -- complete record of what I did,  
14 so that's why I created this really for  
15 myself.

16 Q. Did you convince yourself that  
17 you're not crazy?

18 A. Yes.

19 Q. Do you think other people think  
20 you're crazy?

21 A. I don't know.

22 Q. Do you think it would be  
23 reasonable for other people to think  
24 you're crazy?

58 (Pages 226 to 229)

Page 230

1 A. No.  
 2 Q. Have you ever been treated with  
 3 a psychiatrist or psychologist or other  
 4 mental health provider?  
 5 A. No.  
 6 Q. Had anyone ever suggested that  
 7 you treat with a psychologist,  
 8 psychiatrist, or any other type of mental  
 9 health provider?  
 10 A. No.  
 11 Q. Have you ever been diagnosed  
 12 with any sort of mental health disease or  
 13 illness?  
 14 A. No.  
 15 Q. Have you ever been diagnosed  
 16 with OCD?  
 17 A. No.  
 18 ---  
 19 (At this time, a document was  
 20 marked for identification as Exhibit  
 21 Fagal-20.)  
 22 ---  
 23 BY MS. PEET:  
 24 Q. You're e-mailing here with a

Page 232

1 this as much as you want and convince  
 2 their parents to write. I think you  
 3 should take down the second video with  
 4 three exclamation marks.  
 5 Do you see that?  
 6 A. I see that, uh-huh.  
 7 Q. Why did you send it to Lindsay?  
 8 A. She's a good friend and I  
 9 valued her opinion.  
 10 Q. Okay.  
 11 What did you think when she  
 12 sent you her opinion?  
 13 A. I understood her point to a  
 14 short extent, a small extent. I didn't  
 15 think it was really personal. The real  
 16 estate portfolio I thought was a joke  
 17 about the real estate market, et cetera,  
 18 so I disagreed with her opinion.  
 19 Q. Okay.  
 20 And she's not a Marywood  
 21 administration, correct?  
 22 A. No.  
 23 Q. Did you in fact take down the  
 24 second video after she told you to do

Page 231

1 Lindsay, correct?  
 2 A. Yes.  
 3 Q. Who's Lindsay?  
 4 A. Lindsay Groves is a cellist  
 5 with the Syracuse Symphony Orchestra. She  
 6 lives in Skaneateles, New York.  
 7 Q. She's one of the folks that you  
 8 sent the e-mail to with the videos,  
 9 correct?  
 10 A. Yes, I did.  
 11 Q. Okay.  
 12 And her response to that is on  
 13 the bottom of the first page.  
 14 Do you see that, January 15,  
 15 2012?  
 16 A. Yes.  
 17 Q. Okay.  
 18 And she writes, Fred, the real  
 19 estate portfolio slash young wife stuff is  
 20 really personal, exclamation mark.  
 21 Do you see that?  
 22 A. Yes.  
 23 Q. Geez, I'm wondering if the  
 24 students, who are transients, can get into

Page 233

1 that?  
 2 A. No. Again, she did not tell me  
 3 to do that.  
 4 Q. On the top, you write back to  
 5 Lindsay.  
 6 Do you see that?  
 7 A. Yes.  
 8 Q. And in part you write only  
 9 those in the know know that Levine, open  
 10 parens, written Levine, all capital, as a  
 11 joke because as a Jewish guy working for  
 12 Hitler, his name cannot be Levine,  
 13 exclamation point, closed parens, is on a  
 14 second family --  
 15 A. Right.  
 16 Q. -- period.  
 17 A. Uh-huh.  
 18 Q. So do you agree that it would  
 19 be outlandish for a Jewish person to be  
 20 portrayed working for Hitler?  
 21 A. I don't know if outlandish is  
 22 the word I would use, but I was trying to  
 23 make a point about free speech and didn't  
 24 want to get anything in there about

59 (Pages 230 to 233)

Page 234

1 raising some subsidiary issue about what  
2 religion anybody was in administration, so  
3 that's why I changed the name.

4 Q. Were you concerned about  
5 offending people?

6 A. I was not willing to offend  
7 people just gratuitously. If it had to be  
8 done to make a point if they would be  
9 offended by the video, unhappy with it,  
10 shall we say, then that was part of the  
11 price. No one would appreciate being  
12 criticized, I don't think, in public.

13 Q. And this was public, correct?

14 MR. COHEN: Excuse me. Say  
15 that again.

16 BY MS. PEET:

17 Q. This was public, correct?

18 A. It was available on YouTube, so  
19 the public could access it.

20 Q. Do you think this video or the  
21 videos do anything to further a supportive  
22 or welcoming environment at Marywood  
23 University?

24 A. Yes.

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1 A. She has a private e-mail  
2 address, too, but I see the Marywood  
3 address there. That's correct.

4 Q. Okay.

5 Does this refresh your memory  
6 that you sent it to her as a pre-release  
7 at her Marywood e-mail address?

8 A. Let me read. Let's see. Yes.

9 Q. If you look on -- at the time  
10 that you were e-mailing with Geri, you did  
11 not yet make these videos public, correct?

12 A. That's correct.

13 Q. You write on the first page I  
14 do not think -- and "not" being all  
15 capitals -- they will try to fire me over,  
16 quote, all this, end quote. If by, quote,  
17 this, end quote, you mean over what  
18 happened so far, then absolutely not,  
19 underlined.

20 But, again, at this point you  
21 haven't made the videos public?

22 A. That's correct.

23 Q. All right.

24 You then say assuming the

Page 235

1 Q. How is that?

2 A. Because it might tell people,  
3 look, if you come to Marywood University,  
4 you can speak your mind and have free  
5 speech, an open honest debate, and tackle  
6 big issues, and this is a university that  
7 does that.

8 ---

9 (At this time, a document was  
10 marked for identification as Exhibit  
11 Fagal-21.)

12 ---

13 BY MS. PEET:

14 Q. These are e-mails between you  
15 and Geri Smith, correct?

16 A. Yes.

17 Q. And Geri is the student that  
18 you testified about earlier today?

19 A. Yes.

20 Q. And if you can look on the  
21 second page, you can see that it's at her  
22 Marywood e-mail address.

23 A. I see that.

24 Q. Do you see that?

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1 videos are released, open parens, and at  
2 this point I would say they will be with  
3 -- I guess 95 percent.

4 Is that what you're trying to  
5 say?

6 A. Probability equals point 95,  
7 which is 95 percent, yes.

8 Q. Closed parentheses, comma,  
9 there will be some very pissed off  
10 administrators.

11 Do you see that?

12 A. Yes.

13 Q. Why do you think there were  
14 going to be pissed off administrators?

15 A. Because they're being publicly  
16 criticized in a satirical funny way that  
17 might get a lot of attention.

18 Q. Okay.

19 And who are the administrators  
20 that you think would be pissed off?

21 A. Well, the ones mentioned in the  
22 video.

23 Q. Who are they?

24 A. As I recall, the names that

60 (Pages 234 to 237)

Page 238

1 were mentioned were Paterson, and Munley,  
2 and Garvey, and Heath, and Oliveri, and  
3 Levine or Levine, if you will.

4 Q. Okay.

5 You then write in essence I  
6 have called President Anne Munley a  
7 fascist.

8 See that?

9 A. Yes, uh-huh.

10 Q. You then go on to write tenure  
11 is on my side --

12 A. Yes.

13 Q. -- period.

14 A. Uh-huh.

15 Q. To fire me, they would have to  
16 go through procedures, comma, set up a  
17 committee, comma, have hearings, and then  
18 you can continue.

19 You see that?

20 A. Yes, uh-huh.

21 Q. So you gave thought about  
22 whether or not they were going to  
23 terminate you over this? It crossed your  
24 mind?

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1 A. It crossed my mind.

2 Q. And you gave some thought to  
3 it?

4 A. Yes, I did.

5 Q. You then wrote they know I  
6 would raise a big stink and they would  
7 look foolish, game not worth the candle.

8 Are you trying to say that

9 Marywood probably wouldn't terminate you  
10 because it's not worth it to them? You're  
11 just going to raise a big stink and it's  
12 just not worth it?

13 A. As I said, better for them to  
14 grimace and wait it out until I retire,  
15 and then I give them a suggestion how they  
16 could make me retire early with a five day  
17 a week crazy teaching schedule.

18 But as I said in the video, the  
19 way I was thinking at the time was it's  
20 the older professors who have to stand up  
21 because the younger professors who don't  
22 have tenure are too scared to speak out,  
23 and the middle-aged professors who have a  
24 family and kids, generally speaking, and

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1 they got their careers and whatnot and  
2 they've got -- they're very busy and they  
3 don't maybe have time for all the stuff,  
4 and I think too many older professors just  
5 say well, I'll just not rock the boat and  
6 cruise to retirement, and so I felt it was  
7 my duty to speak up at some possible cost  
8 to myself.

9 Q. Were you calling Marywood's  
10 bluff when you posted those videos?

11 A. Bluff?

12 MR. COHEN: Object to the form.

13 BY MS. PEET:

14 Q. You're saying, you know, I  
15 don't think they're going to terminate me.  
16 I'm going to raise a big stink. They have  
17 to go through this whole procedure. They  
18 might as well just wait it out until I  
19 retire.

20 Were you just kind of pressing  
21 their boundaries and see what they were  
22 going to do to you, stir the pot a little  
23 bit?

24 A. What I was thinking, as I

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1 recall back then, was that I would have  
2 made the video splash. I presume that  
3 that would not go on forever but it would  
4 make a -- say a two-week or so hot topic  
5 on campus and would be, shall we say,  
6 embarrassing to the administration to have  
7 been found out for what it did, and my  
8 hope would be that even if they didn't  
9 publically do anything that they would  
10 mend their ways and that life would go on.  
11 I would continue teaching.

12 If it came to being called in  
13 on the carpet and trying to be escalated  
14 into firing me for some presumed violation  
15 of something, then depending how that was  
16 handled publicity-wise one could either,  
17 you know, keep it all quite and let the  
18 committees do their work or one could --  
19 which I did not do, one could go down  
20 battling raising a public outcry, Fagat up  
21 on charges, blah, blah, blah, blah, blah,  
22 you know, students march, if any would,  
23 you know, for free speech, you know. It  
24 could have been a huge semester-long cause

61 (Pages 238 to 241)

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1 celebre.

2 Q. So you did them a favor?

3 MR. COHEN: Excuse me.

4 BY MS. PEET:

5 Q. So you did --

6 A. Yes.

7 Q. -- them a favor?

8 A. I did them a favor.

9 Q. Do you think that these videos  
10 warranted any type of discipline?

11 A. I would say no.

12 Q. And why do you say that?

13 A. I would say -- I would assume  
14 that I would perhaps have been called on  
15 the carpet and told something along the  
16 lines of, gee, Dr. Fagal, I wish you  
17 hadn't gone that far. I wish you had -- I  
18 wish we had contacted you earlier. I wish  
19 we made a settlement before. I wish --  
20 you know, I wish you'd come to see  
21 President Munley and make a -- and shown  
22 her the videos ahead of time.

23 I mean something like that  
24 maybe could have happened, and obviously

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1 In this Exhibit-21, you mention  
2 something about not supporting the  
3 mission's core values, and we talked about  
4 core values earlier.

5 Do you see that?

6 A. Not yet.

7 Whereabouts?

8 Q. It's in the middle of the page  
9 in the paragraph that starts --

10 A. The first page?

11 Q. -- tenure is on my side,  
12 correct.

13 A. Yes, yes. I see what you're  
14 saying.

15 Q. Okay.

16 To your knowledge, when you  
17 were a tenured professor in January of  
18 2012, were you expected to uphold  
19 Marywood's missions and core values?

20 A. Yes.

21 Q. Did you ever apologize to  
22 Sister Munley or Dr. Levine about these  
23 videos?

24 A. At the meeting -- Dr. Levine

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1 in that case I would have known that she  
2 was very upset about the videos going  
3 public but that -- and I would be told,  
4 gee, please always come to see me before  
5 you do anything major like this and, you  
6 know, that would have been not a  
7 comfortable conversation but it would have  
8 been a conversation and that would have  
9 been it.

10 Q. Did you try to show the video  
11 to Sister Munley before you posted it  
12 publicly?

13 A. No, I did not.

14 Q. Did you try to show the video  
15 to Dr. Levine before you posted it  
16 publicly?

17 A. No.

18 Q. Why not?

19 A. Because I had already tried so  
20 very, very hard to find out what had  
21 happened. I had made proposals and I  
22 thought that was enough. I had done  
23 enough.

24 Q. Okay.

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1 was not at the termination meeting, so I  
2 did not see Dr. Levine at all after the  
3 videos were posted. I did not make an  
4 explicit apology at the January 23rd  
5 meeting.

6 Q. Did you ever apologize to  
7 Sister Munley about those videos?

8 A. No.

9 Q. Did you ever apologize to  
10 Dr. Levine about those videos?

11 A. No.

12 Q. Did you ever apologize to any  
13 member of the Marywood administration  
14 about those videos?

15 A. No.

16 ---

17 (At this time, a document was  
18 marked for identification as Exhibit  
19 Fagal-22.)

20 ---

21 BY MS. PEET:

22 Q. What's been marked as Exhibit-2  
23 seems to be e-mails between -- 22 --  
24 between you and Rod Carveth dated early

62 (Pages 242 to 245)

Page 246

1 January 2012.  
 2 Do you see that?  
 3 A. Yes.  
 4 Q. And I believe you testified  
 5 earlier that he was one of the folks that  
 6 saw the pre-release of the videos.  
 7 A. Yes.  
 8 Q. If you look at the bottom of  
 9 the first page --  
 10 A. Yes.  
 11 Q. -- Rod writes to you honestly I  
 12 think it is a brilliant satire. If it was  
 13 released, however, I think you would catch  
 14 an incomparable amount of grief. Anytime  
 15 Hitler gets raised, no one pays attention  
 16 to the message but the symbolism of Hitler  
 17 as a murderer and butcher. I think the  
 18 university would try and find some  
 19 loophole to undo your tenure and fire you.  
 20 It's not what you -- what you are saying  
 21 here but how you are saying it that puts  
 22 you at risk.  
 23 Do you see that?  
 24 A. Yes, I do.

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1 Q. Did you understand what Rod was  
 2 trying to say to you?  
 3 A. Yes, I did.  
 4 Q. Okay.  
 5 And what was he trying to say  
 6 to you?  
 7 A. He was trying to say I was  
 8 taking a risk by posting those videos.  
 9 Q. And you understood that was a  
 10 risk?  
 11 A. I understood it was a risk.  
 12 Q. And then you -- the top of the  
 13 page is an e-mail that you wrote back to  
 14 Rod, and then you write to him you sound  
 15 like my wife.  
 16 A. Yes.  
 17 Q. Did your wife make similar  
 18 comments to you?  
 19 A. As I mentioned before, she was  
 20 worried that I would upset some people and  
 21 get in trouble of some sort.  
 22 Q. And perhaps lose your job?  
 23 A. Well, losing the job -- just  
 24 had been an ongoing brouhaha and that

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1 would, you know, continue in some fashion.  
 2 Q. You then wrote and I know the  
 3 Hitler link is considered by many to be  
 4 out of bounds.  
 5 A. Yes.  
 6 Q. I would have to face that  
 7 possibility.  
 8 A. Uh-huh.  
 9 Q. I am going to rethink this but  
 10 I think I won't change my mind about the  
 11 release. I will look over the faculty  
 12 manual again, heh.  
 13 Do you see that?  
 14 A. Yes, uh-huh.  
 15 Q. Okay.  
 16 So is it fair to say that you  
 17 didn't change your mind?  
 18 A. That's correct.  
 19 Q. Okay.  
 20 You then wrote down assuming  
 21 the videos are released, if Marywood  
 22 considered going after my job, they will  
 23 probably realize that I would not -- all  
 24 caps -- go quietly. If I were a tenured

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1 42-year-old likely to cause trouble for  
 2 another 20 to 25 years, then the game  
 3 might be worth their votive candle, but I  
 4 will be 66 years old in a month. If --  
 5 all caps -- they are rational, they will  
 6 think I can't be around that -- bold  
 7 italicized -- much longer and they will  
 8 take a big publicity hit for trying to get  
 9 rid of me.  
 10 Do you see that?  
 11 A. Yes, I do.  
 12 Q. So were you -- did you consider  
 13 the fact that because you were 66 years  
 14 old and you probably didn't have that much  
 15 longer of a tenure at Marywood University  
 16 that that weighed in your favor?  
 17 A. What do you mean by weighed in  
 18 my favor?  
 19 Q. That they more likely will not  
 20 terminate your tenure than had you been  
 21 younger?  
 22 A. Yes, because I think that if a  
 23 younger person were to do what I did --  
 24 big if there because when I said they were

63 (Pages 246 to 249)

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1 younger, I don't think they would tend to  
2 do it because of the trade-offs. Because  
3 if the younger person did in fact lose  
4 their tenured job, it'd be very difficult  
5 for that person to find work. It would  
6 cause much family turmoil.

7 But I -- as I just recently  
8 explained, if one is older, then I  
9 considered it my duty to do what I did  
10 given my position and, again, as we just  
11 discussed, if Marywood had to make the  
12 decision what to do about the videos, if  
13 it was a 42-year-old, to be rid of that,  
14 quote/unquote, troublemaker, they'd be rid  
15 of that troublemaker for at least 25  
16 years, and so the game would be worth the  
17 candle. For me being older, it might be  
18 more -- have been more rational for them  
19 to take the -- shall we call it a two-week  
20 publicity hit and tolerate me for what  
21 would not be another 25 years.

22 Q. How many years at that point?

23 A. I had no particular plans to  
24 retire. If I was going to retire that

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1 year, I would have filed earlier for the  
2 bonus. I was thinking of going at least  
3 to age 70 and maybe longer depending how  
4 things went.

5 Q. At that point, have you spoken  
6 to anyone about retirement?

7 A. No.

8 Q. Did you meet with a financial  
9 advisor?

10 A. No, not about retirement. Now,  
11 maybe briefly I might have talked to a  
12 TIAA-CREF guy once about investments but  
13 nothing retirement per se.

14 Q. Do you agree or disagree with  
15 Rod's comment that Hitler is a symbolism  
16 of murder and -- of a murderer and a  
17 butcher?

18 A. Hitler is often used as a  
19 symbol that way, yes, but he's also used  
20 in movies like Mel Brooks as a comedy  
21 figure.

22 Q. The videos, were they connected  
23 to your intro to social sciences course?

24 A. No.

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1 Q. Were they -- what other courses  
2 were you teaching that semester?

3 A. In the spring of 2012, I  
4 believe I was teaching two sections of  
5 economics, a U.S. history class, and I  
6 think I had the social science class also.  
7 I'm not sure.

8 Q. Was the video connected to any  
9 of those courses?

10 A. No.

11 Q. Was it part of some academic  
12 research?

13 A. I follow the news on American  
14 campuses quite closely in terms of what's  
15 going on, in terms of social justice  
16 protests, Occupy Wall Street protests,  
17 free speech protests, all sorts of Black  
18 Lives Matter protests, whatever might be  
19 going on on any different campus, or not  
20 going on, or not allowed to go on.

21 So I was always -- and plus I  
22 always had -- I had that contact with  
23 FIRE, so I was aware of what was going on  
24 and I was also aware that, you know, part

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1 of what had happened to me was not unique  
2 perhaps to Marywood, and so, therefore, if  
3 it came out what had happened to me, that  
4 might very well get picked up by other,  
5 shall we see, researchers or academics,  
6 you know, studying, you know, what's going  
7 on on campus.

8 Q. Were you a researcher?

9 A. I was not doing official  
10 research for journal article about free  
11 speech on campus.

12 Q. So this article -- this video  
13 -- these videos were not connected to any  
14 sort of official research for any journal  
15 articles, correct?

16 A. That's correct.

17 Q. Were they -- were these videos  
18 part of some scholarly pursuit?

19 A. Well, I was pursuing this in a  
20 -- for intellectual free speech purposes  
21 if you want to call that a scholarly  
22 pursuit. I think I would.

23 Q. Okay.

24 Was it part of the curriculum?

64 (Pages 250 to 253)

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1 A. Well, when we do introduction  
2 to social science, there's usually a  
3 student who'd study the Constitution,  
4 maybe read a few federalist papers, and  
5 there'd be a discussion about how it might  
6 relate to current events, and so something  
7 like this could be used as an example.

8 Q. Could in the hypothetical  
9 sense, correct?

10 A. Yes. I had no specific plans  
11 to incorporate it in the course content  
12 for that semester.

13 Q. Okay.

14 When you made the videos and  
15 then posted those videos on YouTube, you  
16 knew why you did it, right?

17 A. Would you repeat the question,  
18 please?

19 Q. When you made the videos and  
20 then you posted them on YouTube, you know  
21 why you did it, right?

22 A. Yes.

23 Q. And as of January 13, 2012,  
24 when they were officially posted and you

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1 e-mailed them around, you knew at that  
2 time why you had done this, correct?

3 A. Yes.

4 Q. And prior to January 13, 2012,  
5 you had already consulted with a lawyer,  
6 correct?

7 A. No.

8 Q. I thought you testified earlier  
9 that you had consulted with a lawyer  
10 perhaps in December of 2011.

11 Is that not true?

12 A. I mentioned to my  
13 brother-in-law, who's a lawyer, that, you  
14 know, I was involved with a dispute on  
15 campus. I had written to FIRE and lawyers  
16 at FIRE, but that was about the incident  
17 and publicity. It was not a consulting  
18 for a lawyer for me, so I did no  
19 consulting.

20 Q. In your opinion, can a tenured  
21 professor say or do anything they want?

22 A. I don't know.

23 Q. Can a tenured professor use the  
24 N word?

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1 A. That's a good question.

2 MR. COHEN: I'm going to  
3 object, legal conclusion. You can  
4 answer.

5 BY MS. PEET:

6 Q. Is your answer I don't know?

7 A. The answer would be I would  
8 hope a professor could use the N word, as  
9 you phrase it, in an academic setting, for  
10 instance, talking about the use of the  
11 word in Huckleberry Finn and what it means  
12 and how it was often used as a  
13 vituperative term and as an academic  
14 discussion.

15 For example, there was a  
16 professor, I believe, at the University of  
17 Oklahoma who just basically got driven out  
18 of class because she was trying to use it  
19 in that type of context. So in that  
20 sense, I think it should be allowed to be  
21 used.

22 Q. What about in a satirical  
23 video?

24 MR. COHEN: Objection, legal

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1 conclusion and to form.

2 THE WITNESS: I'm sorry.

3 MR. COHEN: You can answer.

4 THE WITNESS: I can answer.

5 I've never used the word in  
6 class. I would -- I have not  
7 contemplated using the word. I would  
8 imagine somebody could make some sort  
9 of -- there are rap videos that use  
10 the word all the time that are out  
11 there from what I understand.

12 BY MS. PEET:

13 Q. Are you aware of any rap video  
14 artist that's a tenured professor at a  
15 university?

16 A. I couldn't name one.

17 Q. Okay.

18 So my question to you is do you  
19 feel if it's appropriate for a tenured  
20 professor to use the N word in a satirical  
21 video?

22 A. I would have to see the  
23 satirical video. I don't know.

24 Q. When was the first time you

65 (Pages 254 to 257)



Page 258

1 heard from anyone in Marywood  
2 administration after you posted these  
3 videos?  
4 A. I believe it would have been  
5 Mike Foley Monday morning, January 23rd.  
6 Q. Okay.  
7 And how did Michael Foley get  
8 in contact with you?  
9 A. He came to my office at 8:45  
10 a.m.  
11 Q. And what did he tell you he was  
12 -- did he talk to you then? What  
13 happened?  
14 A. He came to me and he said that  
15 Sister Anne Munley or President Munley,  
16 however he used the term, wanted to see me  
17 at 9 o'clock.  
18 Q. Did he tell you why?  
19 A. I asked him -- I asked him. I  
20 said well, why, and he said well, we can  
21 -- you can probably figure it out.  
22 Q. And did you figure it out?  
23 A. I assumed it had something to  
24 do with the videos.

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1 Q. Do you think she was going to  
2 be happy with you?  
3 A. No.  
4 Q. Were you surprised that up  
5 until January 23rd you didn't hear from  
6 anyone at Marywood about the videos?  
7 A. I was a little surprised but I  
8 thought maybe they were thinking it was  
9 better to let them, as I discussed before,  
10 lie low, take -- take the publicity hit.  
11 Q. Okay.  
12 Did you in fact go to that 9  
13 o'clock meeting?  
14 A. Yes, I did.  
15 Q. And where did that meeting take  
16 place?  
17 A. It was in President Munley's  
18 office complex in a room with a conference  
19 table.  
20 Q. And this meeting was exactly  
21 ten days after you posted the videos,  
22 correct, or at least e-mailed it to  
23 Marywood that you posted it?  
24 A. Yes. The meeting was the 23rd

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1 and I e-mailed to the faculty on January  
2 13th.  
3 Q. Were you surprised that  
4 President Munley wanted to speak with you?  
5 A. No. A little surprised but not  
6 -- not totally.  
7 Q. Why weren't you totally  
8 surprised?  
9 A. Only because I knew that she  
10 would be unhappy with the videos.  
11 Q. Because you depict her as  
12 Hitler?  
13 A. I wasn't thinking so much about  
14 that really as -- in fact, I wasn't  
15 thinking about that at all.  
16 Q. What were you thinking about?  
17 A. I was thinking about the -- the  
18 fact that the Hitler -- the parody videos  
19 might be seen as funny and, therefore, get  
20 a lot of views and raise the issue that I  
21 was concerned about raising about what  
22 happened to the posters.  
23 Q. You were present at Sister  
24 Munley's deposition last week, correct?

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1 A. Yes.  
2 Q. And you heard Sister Munley  
3 discuss at length what her background and  
4 experiences are and have been, correct?  
5 A. Yes.  
6 Q. After hearing that, do you have  
7 a different opinion on what you did and  
8 perhaps have a little bit of remorse that  
9 you depicted her as Adolf Hitler?  
10 A. Again, I wouldn't say that I  
11 depicted her as Adolf Hitler. I would say  
12 it was -- somebody in a Hitler costume was  
13 playing Anne Munley's role. Anne Munley  
14 was not playing a Hitler role. So she was  
15 dressed, if you will, in a Hitler costume  
16 to make the point that there was what I  
17 would consider bad behavior tearing down  
18 the posters as the fascists would do. I  
19 point out in the video I never use the  
20 word Nazi, not once.  
21 Q. There are swastikas on those  
22 people's arms, correct?  
23 A. Yes.  
24 Q. There's no -- there can be no

66 (Pages 258 to 261)

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1 debate or room for a question whether or  
2 not those people depicted Nazi member --  
3 Nazi members, correct?

4 A. The people in the Downfall  
5 video were depicting Nazis.

6 Q. Okay.

7 Who was present at this  
8 meeting?

9 A. Mike Foley was present and  
10 Patricia Dunleavy was present.

11 Q. Back to my question.

12 After hearing Sister Munley's  
13 testimony about her experience, and her  
14 background --

15 A. Yes.

16 Q. -- and her beliefs, has your  
17 views on the videos changed?

18 A. My views on the video haven't  
19 changed. I certainly am sorry if  
20 President Munley took them what I would  
21 consider the wrong way as being accused of  
22 being like Adolf Hitler's worst traits as  
23 if I was calling her a murderer of Jews.  
24 That was absolutely no intent and I don't

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1 Munley wasn't sincere about what she was  
2 saying, that she was making it up, or did  
3 you feel that she really felt that way  
4 when she was describing it during her  
5 deposition?

6 A. I don't know. Sometimes people  
7 will play the victim card, so I don't  
8 know.

9 Q. Tell us everything that  
10 happened during that meeting.

11 A. Well, I was called in and, as I  
12 recall, Sister Anne Munley was at the head  
13 of the table about where the videographer  
14 is and Mike Foley was approximately where  
15 that empty chair is, the first empty  
16 chair. I believe Patricia Dunleavy was  
17 not at the table but sitting in a chair  
18 just to the back maybe with a little  
19 notebook in her lap of some sort, and I  
20 was sitting approximately where you are  
21 sitting.

22 And the discussion -- I was  
23 asked if I posted the videos and I really  
24 post -- I posted them to YouTube -- if I

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1 think anybody seeing the video -- I won't  
2 say anybody. I don't think most people  
3 seeing the video would take it in that  
4 sense.

5 Q. Do you have any remorse after  
6 hearing Sister Munley's deposition about  
7 those videos?

8 A. I feel sad that she feels that  
9 way.

10 Q. Do you wish you didn't do it?

11 A. No.

12 Q. Knowing how she felt, you would  
13 still do it again?

14 A. Knowing how she felt, I might  
15 have gone in and showed her the video  
16 ahead of time.

17 Q. So you may have changed  
18 strategy a little bit?

19 A. That's correct. But at the  
20 time, if I was put back in a time machine  
21 given the same circumstances, given who I  
22 was at the time, I presume I would have  
23 made the same decision.

24 Q. Do you believe that Sister

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1 sent the e-mail and posted the videos and  
2 I agreed to that, and then I was asked, I  
3 believe, to explain the videos in terms of  
4 how they fit into the core values or  
5 something, and so I started to explain --  
6 remember, the videos are all about the  
7 poster tear downs. So I wanted to go back  
8 and explain the poster tear downs and how  
9 those led to the video and all the things  
10 I had done and to, you know, set the  
11 stage, and when I began to explain about  
12 the posters, again, leading up to the  
13 videos, I was cut off and told no, I could  
14 not discuss that. And then I believe I  
15 said well, I would like to answer in  
16 writing; no, you can't do that, and Sister  
17 Anne Munley wanted to hear about the  
18 videos.

19 And so I couldn't explain -- as  
20 I saw it, I couldn't explain the videos  
21 without the context of the whole posters  
22 history, and so it was a 15-minute  
23 meeting. It ended at 9:15 and I was  
24 probably suspended I'll say six -- maybe

67 (Pages 262 to 265)

Page 266

1 six or seven minutes into the meeting.  
 2 And after that, as far as I was concerned,  
 3 well, the hammer has dropped and it was a  
 4 simple question of, okay, what's next, and  
 5 then Sister Anne Munley was saying she  
 6 wanted an explanation about the videos.  
 7 So I was explaining -- I tried  
 8 to explain how I had tried to cooperate  
 9 and seek some sort of agreement through  
 10 Alan Levine and whatnot, and so I got, you  
 11 know, that off my chest. So I explained  
 12 some of the videos even though I hadn't  
 13 been allowed to before I got suspended,  
 14 and Sister Anne wanted me to justify --  
 15 explain the videos, and I really -- at  
 16 that point the game was over and the  
 17 questions were vague, and I said -- I was  
 18 talking about justice. The videos -- I  
 19 tried to, you know, get justice for the  
 20 free speech cause basically, and so  
 21 there's some, should I say, dumping out by  
 22 me of some of those concerns I had but I  
 23 -- philosophically, you know, explaining  
 24 the videos. I'd been suspended already

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1 and at that point it was what's your  
 2 e-mail address and turn in the keys to Pat  
 3 Dunleavy.  
 4 ---  
 5 (At this time, a document was  
 6 marked for identification as Exhibit  
 7 Fagal-23.)  
 8 ---  
 9 BY MS. PEET:  
 10 Q. Mr. Fagal, have you ever seen  
 11 this document before? It's a two-page  
 12 document.  
 13 A. Yes.  
 14 Q. And it appears to be notes from  
 15 the meeting that you just described that  
 16 took place on January 23, 2012.  
 17 Is this a fairly accurate  
 18 description of the -- a summary of what  
 19 took place at the meeting?  
 20 A. Well, I remember reading this  
 21 and I had some problems with some of these  
 22 notes because these were written up after  
 23 the raw notes. I'd have to go over this  
 24 in some detail here, review it.

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1 MR. COHEN: Can you give him  
 2 some time to read it?  
 3 MS. PEET: Sure.  
 4 ---  
 5 (At this time, the witness  
 6 complies with request.)  
 7 ---  
 8 THE WITNESS: Okay.  
 9 So in the third paragraph  
 10 here --  
 11 BY MS. PEET:  
 12 Q. The one that starts Sister Anne  
 13 asked Dr. Fagal?  
 14 A. Yes.  
 15 If we went down to where it  
 16 says Sister Anne asked Dr. Fagal how the  
 17 videos upheld those values, and then your  
 18 next sentence says Dr. Fagal says he  
 19 wouldn't answer any more questions.  
 20 Well...  
 21 Q. Do you dispute that?  
 22 A. If we go down -- yes. Just  
 23 jump down a minute. Next to last  
 24 paragraph, Sister Anne -- okay. The

Page 269

1 middle there, Sister Anne told Dr. Fagal  
 2 that she was suspending him with pay.  
 3 There's nothing here after it  
 4 says Sister Anne asked Dr. Fagal how the  
 5 videos upheld those values, that is when I  
 6 started to explain the videos controversy  
 7 leading up -- pardon me -- the posters  
 8 controversy leading up to the videos, and  
 9 as soon as I started to do that to set the  
 10 context for the videos, I was summarily  
 11 cut off and told that I could not do that.  
 12 I could not discuss the  
 13 posters, that she wanted to know about the  
 14 videos, and basically I was -- I can't --  
 15 like Hamlet without the prince of Denmark  
 16 or whatever it is. I needed to explain  
 17 the videos in terms of the posters and I  
 18 was not allowed to do that.  
 19 Q. Okay.  
 20 A. And so when I stopped talking  
 21 and was told to discuss the videos and I  
 22 said the word "justice", and then that was  
 23 it. I mean I couldn't -- I was not  
 24 allowed to explain, and at that point I

68 (Pages 266 to 269)

Page 270

1 was suspended.  
 2 Q. Okay.  
 3 Were you surprised you were  
 4 suspended?  
 5 A. I was a little bit surprised,  
 6 yes.  
 7 Q. Why?  
 8 A. Because I thought there might  
 9 be a different conversation. I mean there  
 10 wasn't...  
 11 Q. Were you -- to your knowledge,  
 12 were you suspended over those videos?  
 13 A. I presume that's what it was  
 14 for, yes.  
 15 Q. You were suspended with pay,  
 16 correct?  
 17 A. Correct.  
 18 Q. So the meeting happened on a  
 19 Monday.  
 20 Did you call Alan Levine at his  
 21 home that prior Saturday?  
 22 A. Yes.  
 23 Q. Did you speak with Alan?  
 24 A. No.

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1 Q. Did you leave him a voice mail?  
 2 A. Yes.  
 3 Q. Did you tell him you wanted to  
 4 have a conversation off the record?  
 5 A. Yes.  
 6 Q. Why?  
 7 A. Because I was wondering. As  
 8 you said, a week had gone by and I hadn't  
 9 heard anything. So I was just wondering  
 10 what -- what had happened and if there was  
 11 any -- I wouldn't say anything I could do  
 12 but anything to -- I assumed something  
 13 might be happening but I didn't know. I  
 14 just wanted to touch base and see what was  
 15 going on.  
 16 Q. Do you know what Dr. Levine's  
 17 reaction was to the videos?  
 18 A. Not at the time I did not. I  
 19 did not know.  
 20 Q. As we sit here today, do you  
 21 know what Dr. Levine's reaction was?  
 22 A. In some e-mail discovery, I  
 23 learned that he said he was upset.  
 24 Q. Do you know whether or not he

Page 272

1 agreed with the decision to suspend your  
 2 employment?  
 3 A. At the time, I didn't know. I  
 4 thought maybe he didn't support it because  
 5 he was not the one who suspended me.  
 6 Q. Okay.  
 7 As we sit here today, do you  
 8 have any reason to believe that Dr. Levine  
 9 supported the decision to suspend your  
 10 employment?  
 11 A. I can't remember the exact --  
 12 when I was looking at some of the  
 13 discovery e-mails, I believe -- I know  
 14 there was administration meetings about  
 15 having the meeting with me on the 23rd  
 16 and, as I recall, he seemed to be all in  
 17 favor of that.  
 18 Q. Of that being suspension?  
 19 A. I recall that -- I believe  
 20 suspension was on the table in one of  
 21 those agendas that I read.  
 22 Q. And when you say you learned  
 23 Dr. Levine was in favor of that, of that,  
 24 did you mean suspension?

Page 273

1 A. I know he was in favor of the  
 2 meeting. I don't know exactly what  
 3 punishment, shall we say, he was in favor  
 4 of.  
 5 Q. Okay.  
 6 You were ultimately terminated,  
 7 correct?  
 8 A. Correct.  
 9 Q. And is it your understanding  
 10 you were terminated based on those videos  
 11 you created?  
 12 A. Yes, that's the -- that's the  
 13 basic charge.  
 14 Q. Both suspension and termination  
 15 are forms of discipline, correct?  
 16 A. Well, yes. Suspension I would  
 17 call discipline and termination would be  
 18 execution.  
 19 Q. So would you agree that  
 20 suspension is a lesser form of discipline  
 21 than termination?  
 22 A. Yes.  
 23 ---  
 24 (At this time, a document was

69 (Pages 270 to 273)

Page 274

1 marked for identification as Exhibit  
 2 Fagal-24.)  
 3 ---  
 4 BY MS. PEET:  
 5 Q. Do you know who Frances Ferrese  
 6 -- and I apologize if I'm mispronouncing  
 7 that -- is?  
 8 A. Yes, I do know Fran Ferrese.  
 9 Q. And was she the administrative  
 10 assistant to President Munley?  
 11 A. That sounds like a good title  
 12 these days. Executive secretary to the  
 13 president it says here.  
 14 Q. Okay.  
 15 And you received this e-mail  
 16 from her on January 24, 2012; is that  
 17 correct?  
 18 A. Yes.  
 19 Q. And it included various  
 20 attachments, correct?  
 21 A. Do I remember?  
 22 Q. Just for --  
 23 A. Okay. Yeah.  
 24 Q. -- for the last two policies,

Page 276

1 A. Okay.  
 2 Q. This was the same idea that was  
 3 discussed with you the day before,  
 4 correct, in the meeting?  
 5 A. Let me read here. I see what  
 6 she wrote.  
 7 And what's the question?  
 8 Q. The issue that's being  
 9 addressed in this letter, namely how she  
 10 viewed your behavior, that was discussed  
 11 the day before with you in the meeting,  
 12 correct? This is not the first time  
 13 you're hearing that Sister Munley --  
 14 A. Yes. I can't recall all the  
 15 terms such as sexually explicit. I don't  
 16 recall all those terms being used. I knew  
 17 there was unhappiness with the --  
 18 Q. Okay.  
 19 A. -- videos but not all those  
 20 terms.  
 21 Q. What did you do when you  
 22 received this letter?  
 23 A. Right around this time, if not  
 24 the day, I would have called -- I believe

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1 249 through 257, I will tell you were not  
 2 provided with the letter. The rest were,  
 3 and those would be the progressive  
 4 discipline policy and the faculty  
 5 grievances and appeals policy, but the  
 6 other letter -- the other policies you  
 7 were provided with.  
 8 A. Okay. So...  
 9 Q. Is this how you learned that  
 10 Sister Munley was recommending your  
 11 termination of employment?  
 12 A. Yes.  
 13 Q. And it was -- these were the  
 14 issues that you were discussing the  
 15 previous day in the meeting with President  
 16 Munley, correct?  
 17 A. Which issues? On the letter on  
 18 page --  
 19 Q. Yeah, what's contained in the  
 20 letter.  
 21 A. Do you mean where it says as  
 22 you know, our values include? Does  
 23 that --  
 24 Q. Yes.

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1 I called FIRE. I might have been in  
 2 contact with them the day before thinking  
 3 perhaps I needed -- I should have a  
 4 lawyer.  
 5 And so your question was what  
 6 did I do that day?  
 7 Q. When you received this letter.  
 8 A. Yes. So I believe I called  
 9 FIRE. That would have been my first call.  
 10 Q. Okay.  
 11 And is that when they gave you  
 12 Jonathan Cohen as a referral?  
 13 A. Yes.  
 14 Q. Did you do anything else after  
 15 you received this letter?  
 16 A. I can't recall. I told my  
 17 wife.  
 18 Q. What did your wife say?  
 19 A. I can't remember exactly what  
 20 she said but she didn't cry or throw  
 21 dishes or anything.  
 22 Q. Were there some expletives?  
 23 A. No, no.  
 24 Q. Was she happy? Was she

70 (Pages 274 to 277)

Page 278

1 pleased?

2 A. I would say she was not pleased  
3 but she understood.

4 Q. Okay.

5 If you look at DEF187, which  
6 was the last page of the actual packet  
7 that was sent to you.

8 A. 187, okay.

9 Q. Do you see it has a release of  
10 personal information document and then a  
11 place for you to sign and date?

12 A. Yes.

13 Q. Do you remember receiving this?

14 A. Yes.

15 Q. Did you check one of the boxes,  
16 sign, date it, and return it by  
17 February 3, 2012?

18 A. No.

19 Q. Why not?

20 MR. COHEN: Without disclosing  
21 attorney-client communications.

22 THE WITNESS: Without

23 disclosing attorney-client --

24 MR. COHEN: Yes.

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1 policy?

2 A. Would you repeat the question?

3 Q. Prior to January of 2012, have  
4 you seen --

5 A. You said 2005. Okay. I'm  
6 sorry.

7 Q. Oh, my apologies.

8 A. Okay. So --

9 Q. It's been a long day.

10 A. -- just repeat it one more  
11 time.

12 Q. Sure, of course.

13 Prior to January of 2012, had  
14 you ever seen this tenure policy?

15 A. I had seen it. I don't know if  
16 I read every single word of it because it  
17 does change over the years.

18 Q. But the policy was made  
19 available to you nonetheless?

20 A. Yes.

21 Q. Okay.

22 If you go to the next policy,  
23 which is the civil rights policy, 175  
24 through 176.

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1 THE WITNESS: I'm not sure what  
2 would -- it was suggested that I not.

3 BY MS. PEET:

4 Q. Let's look at DEF169 and it  
5 goes through 174. It's the tenure policy.

6 A. Okay.

7 Q. Did you understand that tenured  
8 professors, nonetheless, still have to  
9 abide by the tenure policy?

10 MR. COHEN: Objection, legal  
11 conclusion. You can answer.

12 THE WITNESS: If you have  
13 obligations, you should comply with  
14 those as you understand them. There  
15 might be disagreements as to  
16 interpreting a policy.

17 BY MS. PEET:

18 Q. Okay.

19 Did you understand, as of  
20 January of 2012, that this tenure policy  
21 applied to you?

22 A. Yes.

23 Q. And prior to January of 2005,  
24 have you seen this policy, the tenure

Page 281

1 A. Okay.

2 Q. Did you understand in January  
3 of 2012 that this policy applied to you?

4 MR. COHEN: Objection, legal  
5 conclusion. You can answer.

6 THE WITNESS: Okay.

7 I knew if policies were -- you  
8 know, as part of the official  
9 Marywood policies that I would be  
10 subject to the policies.

11 BY MS. PEET:

12 Q. Did you have -- did you  
13 understand in January of 2012 that you had  
14 to comply with various Marywood policies  
15 including the civil rights policy?

16 MR. COHEN: Objection, legal  
17 conclusion.

18 THE WITNESS: Well, I  
19 understood I had to follow -- follow  
20 the law in terms of -- you know.

21 BY MS. PEET:

22 Q. Okay.

23 My question is not about the  
24 law. My question is about Marywood's

71 (Pages 278 to 281)

Page 282

1 civil rights policy.

2 A. Yeah, civil rights policy. I  
3 would assume I'd have to follow it, yes.

4 Q. Okay.

5 So you agree it applied to you?

6 MR. COHEN: Same objection.

7 THE WITNESS: Yeah.

8 MS. PEET: Okay.

9 THE WITNESS: Yes.

10 BY MS. PEET:

11 Q. Do you agree that it --  
12 Marywood did not condone and will not  
13 tolerate discrimination, harassment, or  
14 assault by any member of the Marywood  
15 community, and then it lists different  
16 protective statuses?

17 MR. COHEN: Objection, legal  
18 conclusion.

19 MS. PEET: It's not a legal  
20 conclusion. I'm reading what the  
21 policy says.

22 THE WITNESS: Yes. Okay.

23 BY MS. PEET:

24 Q. Do you see how someone could

Page 284

1 policy did not apply to you?

2 A. No.

3 Q. And in fact you knew about this  
4 policy because you reference this policy  
5 in your January 13, 2012, e-mail, correct?

6 A. I can't recall specifically  
7 referencing it. I'd have to look at it.

8 Q. Okay. We can do that. It is  
9 Exhibit-15, and if you look at DEF1445.

10 A. I do remember referring to that  
11 Marywood could monitor one's e-mail. I do  
12 remember that discussion.

13 Q. Do you remember referring to,  
14 in words or substance, a -- that Marywood  
15 had a computer policy and beware --

16 A. Yes.

17 Q. -- is the words you used?

18 A. Yes.

19 Q. Okay.

20 A. Yes.

21 Q. Do you feel that with the  
22 videos, you were respecting the civil  
23 rights of others?

24 MR. COHEN: Can you repeat

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1 have found the video to be discriminatory  
2 or harassing?

3 A. I can understand how some  
4 people would be offended by it. Whether  
5 that would be defined as harassing  
6 somebody or discriminating against  
7 somebody, in my case I would say no.

8 Q. Okay.

9 Do you understand how one could  
10 have found the policies to be an abuse of  
11 academic freedom?

12 A. No, I don't understand.

13 Q. Do you understand how people  
14 that watch the videos could have saw them  
15 to be -- or you to have exhibited  
16 professional incompetence?

17 A. No, I don't.

18 Q. If you turn to the next policy,  
19 177 through 180, it's Marywood's  
20 conditions of computer use policy.

21 Do you see that?

22 A. Yes.

23 Q. Did you have any reason to  
24 believe in January of 2012 that this

Page 285

1 that?

2 BY MS. PEET:

3 Q. Do you feel that with those  
4 videos, you were respecting the civil  
5 rights of others to an open and hospitable  
6 environment?

7 A. So are we referring to a  
8 specific phrase here? Where is this?

9 Q. It comes from the second page,  
10 number eleven, but I'm asking you if do  
11 you believe that those videos respected  
12 the civil rights of others to an open and  
13 hospitable environment?

14 A. Yes.

15 Q. Okay.

16 Turn to the next policy, 181  
17 through 182, the academic freedom policy.  
18 Do you believe that your videos  
19 were in furtherance of academic freedom?

20 A. Yes.

21 Q. And how's that?

22 A. Trying to open up discussion,  
23 and the videos themselves criticized the  
24 forces that would reduce discussion and

72 (Pages 282 to 285)

Page 286

1 free speech.

2 Q. Okay.

3 The policy talks about teachers  
4 being entitled to freedom in the  
5 classroom.

6 Were the videos shown in the  
7 classroom?

8 A. No, they were not.

9 Q. And the videos had nothing to  
10 do with the classroom, correct?

11 A. I might have shown them in the  
12 class later that semester if we got --  
13 when we got to the Constitution and free  
14 speech. I might have chosen to say, hey,  
15 here's something that happened on campus  
16 last semester and I might have talked  
17 about first amendment briefly, talked  
18 about first amendment issues in public  
19 universities versus private, et cetera,  
20 and that would have been -- videos don't  
21 take long. So I did not have -- plan -- I  
22 did not plan to show them but I might  
23 have.

24 Q. Okay.

Page 288

1 A. Yes.

2 Q. Do you have any reason to  
3 dispute that in January of 2012 this  
4 policy applied to you?

5 MR. COHEN: Objection, legal  
6 conclusion. Go ahead.

7 THE WITNESS: No.

8 BY MS. PEET:

9 Q. Okay.

10 Do you believe that with your  
11 videos you were exercising critical  
12 self-discipline and judgment?

13 A. I thought about what I did. It  
14 was a tough choice.

15 Q. What was your choice?

16 A. The choice was to -- since I  
17 was warned by Rod Carveth and Lindsay, and  
18 I think they were the ones who explicitly  
19 raised the issue that some people have  
20 what I might call a knee jerk reaction to  
21 a Hitler reference, that there was a risk  
22 I was running by doing that. So I had to  
23 think about whether I would do it that way  
24 or not and I chose to do it.

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1 MR. COHEN: Do you mind if I  
2 take a five-minute break?

3 MS. PEET: Sure.

4 ---

5 THE VIDEOGRAPHER: We're now  
6 off the record. The time is 3:57  
7 p.m.

8 ---

9 (At this time, a short break  
10 was taken.)

11 ---

12 THE VIDEOGRAPHER: We are back  
13 on the record. The time is 4:05 p.m.

14 ---

15 BY MS. PEET:

16 Q. Just another reminder that  
17 you're still under oath and your testimony  
18 needs to be truthful, accurate, and  
19 complete.

20 Do you understand?

21 A. I do understand.

22 Q. 183 to 184 is the Marywood's  
23 policy on professional ethics.  
24 Do you see that?

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1 Q. Okay.

2 Do you believe that those  
3 videos -- strike that.

4 Do you believe that with those  
5 videos you were exercising critical  
6 self-discipline and judgment?

7 A. Yes.

8 Q. Okay.

9 Do you believe that with those  
10 videos you showed due respect for the  
11 opinions of others?

12 A. Yes.

13 Q. Okay.

14 The next 185 through 186 is  
15 Marywood's mission and core values.

16 We discussed this earlier  
17 today, correct?

18 A. Yes.

19 Q. And you have seen this before,  
20 right, Marywood's mission statement and  
21 core values?

22 A. Yes.

23 Q. And was it -- I believe you  
24 already testified that you understood as a

73 (Pages 286 to 289)



Page 290

1 tenured professor at Marywood you were  
2 committed to abiding by Marywood's mission  
3 and core values, correct?

4 MR. COHEN: Objection, legal  
5 conclusion.

6 THE WITNESS: Yes.

7 BY MS. PEET:

8 Q. Okay.

9 The first core value is  
10 Catholic identity.

11 Do you see that?

12 A. Yes.

13 Q. Do you feel that those videos  
14 upheld Marywood's Catholic identity?

15 A. I would say the one sentence  
16 there is vague to the extent that my  
17 videos tried to promote intellectual  
18 discourse and criticize what Marywood did  
19 to not encourage intellectual values that  
20 that would be part of -- that that could  
21 be seen as part of the Catholic identity,  
22 and I do realize that other people would  
23 say no.

24 Q. Okay.

Page 292

1 Q. And do you see how other folks  
2 might have watched the video and have  
3 believed that the videos did not uphold  
4 Marywood's core value of empowerment?

5 A. Well, let me just read the one  
6 sentence. Empowerment says education to  
7 enable access and to empower the  
8 underserved to take a full role in the  
9 life of the broader society. I would say  
10 that the videos -- by criticizing what  
11 Marywood did with respect to the posters,  
12 they were encouraging empowerment on the  
13 part of students to be exposed to, in this  
14 case, the speaker.

15 Q. Okay.

16 My question to you is do you  
17 see how folks that have watched those  
18 videos may have concluded that they did  
19 not uphold Marywood's commitment to  
20 empowerment?

21 A. No.

22 Q. Do you believe that your videos  
23 upheld Marywood's commitment to service?

24 A. Let me read the sentence.

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1 Do you believe that your videos  
2 upheld Marywood's respect for each person  
3 core value?

4 A. Again, respect is a vague term.  
5 I can respect -- people have rights, and  
6 as a human being they have certain rights.  
7 On the other hand, that doesn't mean  
8 there's a right not to be criticized, and  
9 if one is criticized, one might be  
10 offended that they're criticized. That I  
11 would say comes with the territory of  
12 being a human being.

13 Q. Okay.

14 Do you believe that with those  
15 videos you were upholding Marywood's core  
16 value of respect for each person?

17 A. Yes.

18 Q. Okay.

19 Do you believe that with your  
20 videos you were upholding Marywood's core  
21 value of empowerment?

22 A. Yes. Certainly I was the one  
23 trying to empower people to be exposed to  
24 ideas.

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1 Well, rooted in the deep belief that  
2 learning and scholarship serve the global  
3 community is the belief in the value of  
4 the diverse types of work that support  
5 that service, and the preparation of  
6 students for leadership by participation  
7 in that service.

8 One way people got exposed to  
9 ideas these days is through YouTube videos  
10 and sometimes you can use comedy and  
11 satire to make a point, and so you can  
12 show the unempowered how they can be  
13 powerful by making a video with cheap  
14 software. So I would say yes.

15 Q. Depicting their boss as a  
16 fascist Adolf Hitler?

17 A. I wouldn't say as a fascist  
18 Adolf Hitler but I would say as -- there  
19 is some behavior that -- such as the  
20 tearing down of posters that was  
21 paralleled by behavior of the fascist.

22 Q. Do you remember sending an  
23 e-mail in which you said essentially you  
24 are depicting Sister Munley as a fascist?

74 (Pages 290 to 293)

Page 294

1 A. She -- I can't remember the  
2 exact phrase, but I think we just saw that  
3 I did use that term. I would note that I  
4 did not use the term "Nazi".

5 Q. Okay.

6 Do you believe that with your  
7 videos you were upholding Marywood's core  
8 value of commitment to excellence?

9 A. Well, the videos certainly did  
10 get a lot of views and certainly some  
11 people did think they were excellent.  
12 That's a matter of opinion as to whether  
13 they were excellent or not.

14 Q. I'll ask the question again.

15 Do you believe that the videos  
16 uphold Marywood's core value of commitment  
17 to excellence?

18 A. Yes.

19 Q. Okay.

20 You said that the videos got a  
21 number of views.

22 How many views did it get?

23 A. I believe the first video got  
24 somewhere near 2,000 views, and perhaps

Page 296

1 me --

2 Q. Okay.

3 A. -- saying they had seen the  
4 videos.

5 Q. What kind of comments did they  
6 make?

7 A. Supportive.

8 Q. How did they do that, by  
9 e-mail?

10 A. Was it the videos? Let's see.  
11 Let me think. I can't remember whether it  
12 was the videos now that I think about it  
13 or whether it was the reaction to the  
14 lawsuit. That might have been -- I might  
15 be wrong on the videos.

16 Q. Did you send an e-mail out to  
17 folks that you filed a lawsuit against  
18 Marywood?

19 A. No. I told some friends of  
20 mine that I had but I did not send out any  
21 blast e-mail to anybody.

22 Q. Again, I will tell you that the  
23 next policy, 249 through 251, was not  
24 provided.

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1 100 of them or 50 of them were by me just  
2 checking to see how many views there were.  
3 The second video probably got about half  
4 that.

5 Q. Did you hear from folks outside  
6 the Marywood community, other than we've  
7 talked about today, people that you don't  
8 know that viewed the videos that reached  
9 out to you?

10 A. Let me think.

11 Would you repeat the question,  
12 please?

13 Q. Sure.

14 Did you ever hear from anyone  
15 that's not affiliated with Marywood that  
16 saw the videos that reached out to you,  
17 other than what we have already discussed  
18 today, to give you their opinion about the  
19 videos?

20 A. I believe some ex-Marywood  
21 students, through the Marywood grapevine,  
22 learned about the videos and saw them and  
23 made a comment, and I don't recall anybody  
24 without a Marywood connection contacting

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1 MS. PEET: Actually, can we  
2 change this and make -- off the  
3 record.

4 ---

5 (At this time, a discussion was  
6 held off the record.)

7 ---

8 (At this time, a document was  
9 marked for identification as Exhibit  
10 Fagal-25.)

11 ---

12 BY MS. PEET:

13 Q. What has been placed before you  
14 is Marywood's progressive discipline  
15 policy.

16 Do you see that?

17 A. Yes.

18 Q. Have you seen this before?

19 A. Yes.

20 Q. Is it your contention that  
21 Marywood violated this policy?

22 A. Yes.

23 Q. Why is that?

24 A. Because the procedures weren't

75 (Pages 294 to 297)

Page 298

1 followed as outlined in the policy.

2 Q. Okay.

3 What procedures weren't  
4 followed?

5 A. Well, it says Marywood  
6 University endorses a progressive  
7 discipline policy designed to promote  
8 resolution in a fair and orderly manner  
9 because the university regards  
10 disciplinary action is corrective and not  
11 punitive, and then it talks about  
12 procedures and how they commence, and meet  
13 with administrator, suspension. The  
14 faculty member may be suspended by the  
15 vice president for academic affairs.  
16 Suspension is justified if immediate harm  
17 to the faculty member or others is  
18 threatened by the person's continuance.

19 So there are various procedures  
20 that I don't think were followed. No  
21 remedial -- let's see. Where's the phrase  
22 here? My suspension wasn't reviewed by a  
23 committee. As I recall, we -- various  
24 issues that we raised pertaining to this

Page 300

1 declarative sentence.

2 Q. Have we exhausted all the  
3 reasons why you believe the progressive  
4 discipline policy has been violated?

5 A. No, because my memory is not  
6 perfect.

7 Q. Okay.

8 What are the other reasons?

9 A. I would have to review the  
10 Complaint to refresh my memory.

11 Q. Okay.

12 So anything that's included in  
13 the Complaint would you like to  
14 incorporate here today for the reasons why  
15 you believe the progressive discipline  
16 policy was violated?

17 A. I believe the Complaint would  
18 cover these issues.

19 Q. And by Complaint, just so we're  
20 on the same page, we're referring to the  
21 Amended Complaint, correct?

22 A. That's correct.

23 Q. Would your position at all  
24 change if Dr. Levine was the one that

Page 299

1 set of policies.

2 Q. Okay.

3 The vice president for academic  
4 affairs, that would have been Alan Levine,  
5 correct?

6 A. Yes.

7 Q. Do you know to whom he  
8 reported?

9 A. I presume President Munley.

10 Q. Okay.

11 Does it say that the faculty  
12 member can only be suspended by the vice  
13 president of academic affairs?

14 A. No.

15 Q. Okay.

16 Does it say suspension is only  
17 justified if immediate harm to the faculty  
18 member or others is threatened by the  
19 person's continuance in the faculty  
20 position?

21 A. The word "only" does not appear  
22 there.

23 Q. Okay.

24 A. Though it looks like a

Page 301

1 advised you of your suspension versus  
2 Sister Munley?

3 A. I believe that that would have  
4 been, shall we say, in Marywood's favor if  
5 he had been the one who had done it.

6 Q. Okay.

7 How would that have impacted  
8 you? When I mean that, who advised you of  
9 your suspension.

10 A. Well, if Dr. Levine had been at  
11 the meeting, to put this position in here  
12 as being the one, the position person who  
13 actually does the suspension, then that  
14 would seem to follow that that would be  
15 the one who would have been at the meeting  
16 to do the suspending.

17 Q. Is there a requirement that a  
18 meeting like that take place prior to a  
19 suspension?

20 MR. COHEN: Objection, legal  
21 conclusion. You can answer.

22 THE WITNESS: It says -- let's  
23 see. It says here the administrator  
24 receiving the complaint shall discuss

76 (Pages 298 to 301)

Page 302

1 the matter with the faculty member in  
2 a confidential conference. So to me  
3 that says there should be a  
4 meeting --

5 MS. PEET: Okay.

6 THE WITNESS: -- with the  
7 administrator.

8 BY MS. PEET:

9 Q. And a meeting took place,  
10 correct?

11 A. We did have a meeting, yes.

12 Q. Okay.

13 The next policy is 252 through  
14 257, faculty grievances and appeals.

15 Do you see that?

16 A. 262 to 260 --

17 Q. 252. Pardon me.

18 A. I'm sorry. 252.

19 Q. Okay. 257.

20 A. Okay.

21 Q. The faculty grievances and  
22 appeals.

23 Do you see that?

24 A. Yes.

Page 303

1 Q. Do you allege that this policy  
2 was violated?

3 A. Yes.

4 Q. And on what basis?

5 A. There was supposed to be a  
6 separate committee to hear an appeal for  
7 suspension, and that meeting would have  
8 been solely to deal with suspension.

9 Q. Where does it say that there's  
10 supposed to be a separate committee to  
11 hear the suspension versus termination?

12 A. Let me see. Where does it say  
13 -- this is the grievances and appeals  
14 section. Is there a section about the  
15 suspension? I don't see where that would  
16 be. Would that be under progressive  
17 discipline somewhere?

18 I know it's -- I recall reading  
19 somewhere that one gets a committee for  
20 suspension and termination and that the  
21 policy says that the committee members for  
22 each committee may or may not be the same,  
23 that the president of the university  
24 determines whether the members of the

Page 304

1 committee would be the same or not, but I  
2 don't have it in front of me. I recall  
3 that it's explicit that there are two  
4 committees, one for suspension and one for  
5 termination.

6 Q. Okay.

7 Any other basis for your belief  
8 that the faculty grievances and appeals  
9 policy was violated?

10 A. Well, the grievance committee  
11 was grieving whether the procedures were  
12 followed and the grievance committee said  
13 they were, but we disputed that in terms  
14 of there was no committee for the  
15 suspension.

16 Q. Okay.

17 Anything else?

18 A. Not that I can recall right  
19 now.

20 Q. Okay.

21 ---

22 (At this time, a document was  
23 marked for identification as Exhibit  
24 Fagal-26.)

Page 305

1 ---  
2 BY MS. PEET:

3 Q. After you received the first  
4 letter from Sister Munley, you then  
5 received another statement of charges,  
6 correct?

7 A. Yes, I believe on February 8th.

8 Q. And I believe it was in part  
9 because perhaps something was missing and  
10 your attorney advised Sister Munley that  
11 and she --

12 A. Yes.

13 Q. -- provided a more full  
14 context --

15 A. Correct.

16 Q. -- is that correct? Okay.

17 And that's what Exhibit-26 is,  
18 correct, the revised statement of charges,  
19 for lack of better words?

20 A. I see the February 8th, yes.

21 Q. Okay. On this policy there --  
22 on this packet there's a policy that was  
23 not attached to the last one which is on  
24 224 through 225 towards the end of your

77 (Pages 302 to 305)

Page 306

1 packet, Marywood University's goals and  
2 objectives.

3 Do you see that?

4 A. President's page, Marywood  
5 University's goals and objectives. Okay.  
6 I see it.

7 Q. Okay.

8 Do you believe that your videos  
9 upheld what is provided here in Marywood  
10 University's goals and objectives?

11 A. I can't remember reading this.

12 May I read it now, please?

13 Q. Of course.

14 - - -

15 (At this time, the witness  
16 complies with request.)

17 - - -

18 THE WITNESS: Okay. I read the  
19 goals and objectives.

20 BY MS. PEET:

21 Q. Okay.

22 My question to you was do you  
23 believe that the videos upheld Marywood's  
24 -- Marywood University's goals and

Page 308

1 core values in the workplace?

2 A. I -- we went through all those  
3 just a short while ago.

4 Q. Right.

5 And the question is you believe  
6 that you upheld the core values in the  
7 workplace with those videos?

8 A. Yes. I -- yes, that's correct.

9 Q. Okay.

10 A. And the second set of bullets  
11 there about the awareness, I don't -- I  
12 just see that as being irrelevant. The  
13 next four bullet points, I don't see  
14 really the relevance there.

15 Q. Okay.

16 A. The last bullet point on the  
17 page, employees will serve as role models  
18 as socially responsible leaders. Again,  
19 however one defines a socially responsible  
20 leader, but I certainly tried to carry the  
21 fire torch and do something I thought was  
22 worthwhile. Others might not have agreed.

23 Q. Pun intended?

24 A. Yes, absolutely.

Page 307

1 objectives?

2 A. I don't know because, as I read  
3 these, almost all of them pertain to  
4 outcomes such as a majority of the  
5 students who participate in service  
6 opportunities in an ongoing way. I mean  
7 how the videos would support, for  
8 instance, that goal, I don't know. Maybe  
9 the students would be inspired to say,  
10 hey, maybe I can make a video some day and  
11 maybe that would be a public service  
12 video, maybe I too can use whatever.

13 Q. Are you suggesting the Hitler  
14 videos would be a PSA, a public service  
15 announcement?

16 A. No, but I'm suggesting that  
17 once students see what can be done with  
18 videos, they might be inspired to try it  
19 themselves. The only thing I see it  
20 implies to -- the fourth bullet says  
21 employer -- employees will demonstrate  
22 core values in the workplace, and we've  
23 already discussed those.

24 Q. And you believe you upheld the

Page 309

1 Q. Okay.

2 On pages 209 --

3 A. And -- excuse me.

4 Q. Oh, you're not done?

5 A. No, no. Let me go to the last  
6 one. Challenging instructional program.  
7 I just want to say that I was a  
8 challenging professor.

9 Q. Okay.

10 On pages 209 to -- bottom of  
11 209 and top of 210, Sister Munley again  
12 talks about that release document that she  
13 attached and asked you to sign it if you  
14 wanted to by Friday, February 17, 2012.

15 Do you see that?

16 A. As I recall, it was a Hobson's  
17 choice where she was trying to speed up  
18 the process of terminating me, which is  
19 why I was advised not to sign that.

20 Q. Okay.

21 So is it fair to say that you  
22 did not sign and return that document?

23 A. That's correct.

24 Q. And that document I'm referring

78 (Pages 306 to 309)

Page 310

1 to is the release of personal information  
2 authorization form.

3 A. Yes, yes.

4 Q. You talked about the fact that  
5 you had a -- you grieved your decision --  
6 the decision, correct?

7 A. Yes. Excuse me.

8 The decision to do what?

9 Q. The suspension and  
10 recommendation to terminate your  
11 employment.

12 A. Yes.

13 ---

14 (At this time, a document was  
15 marked for identification as Exhibit  
16 Fagal-27.)

17 ---

18 BY MS. PEET:

19 Q. Did you ever see this letter  
20 before?

21 A. I think -- I'm not sure. I  
22 believe I saw this in discovery e-mails.

23 Q. Okay.

24 Do you have any reason to

Page 312

1 BY MS. PEET:

2 Q. On this document that has been  
3 placed before you, is this set forth the  
4 grievance that -- against President Munley  
5 that you submitted to the committee?

6 A. Yes.

7 Q. Did you draft this grievance  
8 that's contained on Exhibit-28?

9 A. I worked on this with my  
10 attorney.

11 Q. Okay.

12 And this is the final product,  
13 what you submitted?

14 A. Yes.

15 Q. Anyone else between -- besides  
16 you and your attorney work on this?

17 A. No.

18 ---

19 (At this time, a document was  
20 marked for identification as Exhibit  
21 Fagal-29.)

22 ---

23 BY MS. PEET:

24 Q. Do you remember receiving this

Page 311

1 dispute that Dr. Sadlack was the chair of  
2 the Faculty Grievance Committee?

3 A. No.

4 Q. Do you have any reason to  
5 dispute that she advised President Munley  
6 on or around March 19, 2012, that you  
7 filed a grievance and that a committee has  
8 been convened to review your complaint?

9 A. Yeah, that's what the letter --  
10 yes.

11 Q. Okay.

12 You have no reason to dispute  
13 that, correct?

14 A. No, no reason to disagree with  
15 it.

16 Q. And to your knowledge, a  
17 committee was ultimately formed?

18 A. To my knowledge, a committee  
19 was ultimately formed.

20 ---

21 (At this time, a document was  
22 marked for identification as Exhibit  
23 Fagal-28.)

24 ---

Page 313

1 e-mail from Dr. Sadlack informing you that  
2 they received your official grievance  
3 regarding your suspension and termination?

4 A. Yes, I recall this.

5 Q. Did -- she says if there's any  
6 additional information you would like us  
7 to consider, please let me know.

8 Did you contact Dr. Sadlack  
9 with additional information?

10 A. I can't recall for sure but I  
11 think I did.

12 Q. What did you provide?

13 A. At some point, I believe I  
14 submitted the explanation of the  
15 scene-by-scene videos.

16 Q. And that's what we discussed  
17 earlier today, right?

18 A. What we discussed earlier, at  
19 least you had a copy of it, but I cannot  
20 remember exactly whether it was this  
21 committee or another committee that got  
22 those.

23 Q. Okay.

24 Do you know whether or not the

79 (Pages 310 to 313)

Page 314

1 grievance committee met to discuss your  
2 grievance?

3 A. I don't know for a fact. I was  
4 told they met and discussed the grievance.  
5 I got a report that they discussed the  
6 grievance.

7 Q. Were you involved at all in  
8 their decision-making or thought process?

9 A. I wasn't involved in their  
10 thought process or decision-making, no.

11 Q. Okay.

12 To your knowledge, did the  
13 grievance committee ultimately make a  
14 decision with reference to your grievance?

15 A. The grievance committee  
16 informed me by an e-mail that they  
17 examined the grievance and found it  
18 wanting and...

19 ---

20 (At this time, a document was  
21 marked for identification as Exhibit  
22 Fagal-30.)

23 ---

24 BY MS. PEET:

Page 316

1 about there being no specific committee to  
2 deal with the appropriateness of the  
3 suspension.

4 Q. Okay.

5 So you disagreed with the  
6 grievance committee's findings?

7 A. Yes.

8 Q. Did Sister Munley sit on the  
9 grievance committee, to your knowledge?

10 A. I don't know.

11 Q. Do you have any --

12 A. I don't -- I don't --

13 Q. -- knowledge that she did?

14 A. No knowledge that she did. I  
15 don't know if there's any contact. I  
16 don't know.

17 Q. Do you -- same question for  
18 Dr. Levine.

19 Do you have any knowledge of  
20 whether or not he sat on the committee?

21 A. No knowledge. I presume he did  
22 not.

23 Q. Okay.

24 Likewise, do you presume Sister

Page 315

1 Q. Is this the e-mail that you  
2 received from Dr. Sadlack with reference  
3 to the grievance committee's findings?

4 A. Yes. This is what I was just  
5 referring to.

6 Q. Okay.

7 And she writes we have found no  
8 evidence of improper action on President  
9 Munley's part which would constitute a  
10 legitimate grievance.

11 Do you see that?

12 A. I see that.

13 Q. Do you disagree with  
14 Dr. Sadlack and the committee's decision?

15 A. Yes.

16 Q. Okay.

17 And what do you disagree with?

18 A. Well, she mentions the five  
19 things here; the issue of which individual  
20 was doing the suspending, whether I was a  
21 cause of immediate harm to myself or  
22 others, whether there was no progressive  
23 discipline in the sense of a chance for  
24 any remediation, and then the last one is

Page 317

1 Munley did not sit on the committee?

2 A. I presume she was not an  
3 official committee member.

4 Q. Is it fair to say that Sister  
5 Munley did not stop you from filing a  
6 grievance?

7 A. That would -- Sister Munley did  
8 not stop me from filing a grievance.

9 ---

10 (At this time, a document was  
11 marked for identification as Exhibit  
12 Fagal-31.)

13 ---

14 BY MS. PEET:

15 Q. What has been marked as  
16 Exhibit-31 is -- are e-mail exchanges  
17 between you and Dr. Sadlack about your  
18 grievance.

19 Do you see that?

20 A. Yes.

21 Q. Do you remember having these  
22 e-mails with Dr. Sadlack?

23 A. Let me look at them. Yes, on  
24 the first page here.

80 (Pages 314 to 317)

Page 318

1 Q. If you look at document DEF295,  
2 which is towards the end.  
3 A. 295, okay.  
4 Q. Which is an e-mail -- the top  
5 one is an e-mail from Erin to you dated  
6 March 29, 2012, at 5:03 p.m.  
7 Do you see that?  
8 A. It's from Sister Gail Cabral to  
9 me. Oh, wait, wait. I'm sorry.  
10 Q. She's copied on the letter.  
11 A. Wait, wait. I'm sorry. I'm  
12 sorry. That was -- right. From the  
13 bottom of the previous page, it's from  
14 Sadlack to me with a copy to Cabral,  
15 right.  
16 Q. Okay.  
17 A. So dear Fred, okay.  
18 Q. She says -- she being Erin says  
19 all I can do is say what I did in the  
20 letter, that we checked the policy wording  
21 carefully and did not find a violation of  
22 procedure in any of the five instances you  
23 grieved.  
24 Do you see that?

Page 319

1 A. Yes.  
2 Q. She also wrote in addition, the  
3 policy manual states that the findings of  
4 the grievance committee cannot themselves  
5 be grieved.  
6 Do you see that?  
7 A. Yes.  
8 Q. Do you disagree with that?  
9 A. No.  
10 Q. And then she then writes please  
11 note that our findings do not preclude  
12 your appealing the termination itself  
13 through an ad hoc committee as outlined in  
14 the progressive discipline policy.  
15 Do you see that?  
16 A. I see that.  
17 Q. And then it says if you want to  
18 do that, you need to contact Sister Gail  
19 Cabral as faculty senate president to  
20 exercise that option.  
21 Do you see that?  
22 A. Yes.  
23 Q. And in fact Sister Cabral is  
24 copied on that e-mail, correct?

Page 320

1 A. Yes.  
2 Q. Did you then request an ad hoc  
3 committee be put together to review Sister  
4 Munley's decision?  
5 A. Sister Munley's decision to?  
6 Q. Suspend and term -- and  
7 recommend your termination of employment.  
8 A. Yes.  
9 ---  
10 (At this time, a document was  
11 marked for identification as Exhibit  
12 Fagal-32.)  
13 ---  
14 BY MS. PEET:  
15 Q. Exhibit-32 is an e-mail from  
16 you to Sister Munley regarding your  
17 request for an ad hoc faculty committee,  
18 correct?  
19 A. Correct.  
20 Q. And it's dated March 29, 2012,  
21 correct?  
22 A. Correct.  
23 Q. Was your request granted?  
24 A. Yes.

Page 321

1 Q. Did anyone assist you in  
2 drafting that letter?  
3 A. This letter here? I believe my  
4 -- consulted with my attorney.  
5 Q. Okay.  
6 ---  
7 (At this time, a document was  
8 marked for identification as Exhibit  
9 Fagal-33.)  
10 ---  
11 BY MS. PEET:  
12 Q. Do you recall receiving this  
13 letter from Sister Munley dated April 3,  
14 2012?  
15 A. Yes. I recall receiving this  
16 letter.  
17 Q. Okay.  
18 And she has agreed to convene  
19 an ad hoc committee to appeal the  
20 decisions, correct?  
21 A. Let me see here now. This is  
22 April 3rd and the second sentence says  
23 chose to file a grievance under the  
24 Marywood University grievance and appeals

81 (Pages 318 to 321)



Page 322

1 policy. That part of the statement is  
2 true.

3 Q. Okay.

4 A. Chose not to convene an ad hoc  
5 committee to review my recommendations as  
6 I had offered you on two occasions. I  
7 presume there she's talking about those  
8 two cases where, as I put it, she was  
9 trying to speed up the policy.

10 Q. The release documents?

11 A. Speed up the release documents,  
12 that's correct.

13 Q. And you agree you did not --

14 A. I did not --

15 Q. -- sign and submit them?

16 A. -- sign those, that's correct.

17 Q. Okay.

18 A. Faculty Grievance Committee  
19 reviewed your grievance, found no evidence  
20 of improper action on my part. Okay. And  
21 she said the grievance process is now  
22 complete, decide to finalize my  
23 recommendation. As a result, your  
24 employment with Marywood and your tenure

Page 323

1 are terminated effective today, April 3,  
2 2012.

3 Q. Okay.

4 A. Okay.

5 So at this point I am done.

6 Q. Okay.

7 She tells --

8 A. And then she offers a chance to  
9 review what has been said is a -- really a  
10 final recommendation.

11 Q. Okay.

12 A. But she did terminate me. She  
13 says I am terminated as of April 3rd.

14 Q. Okay.

15 Did you select a tenured  
16 faculty member to be included on the ad  
17 hoc committee?

18 A. Yes.

19 Q. And did you submit a name to  
20 Sister Cabral?

21 A. Yes.

22 Q. And did you choose Ed O'Brien?

23 A. Yes.

24 Q. And was Ed O'Brien indeed

Page 324

1 selected to the committee?

2 A. Yes.

3 Q. Why did you choose Ed O'Brien?

4 A. I'd known him for many years.

5 I knew he was intelligent and I knew he  
6 had -- we worked together on the academic  
7 commuting -- computing committee, and so I  
8 had worked with Ed before and I knew that  
9 he would probably be -- because of his  
10 status he would be allowed to be chosen.

11 ---

12 (At this time, a document was  
13 marked for identification as Exhibit  
14 Fagal-34.)

15 ---

16 BY MS. PEET:

17 Q. Did you receive this e-mail  
18 from Sister Cabral on April 30, 2012?

19 A. Let me see. I -- yes, I did  
20 receive this.

21 Q. Did you assert any objection to  
22 Dr. Bittel and Mr. Povse being selected as  
23 the other individuals on the committee?

24 A. I did not, but at the time I --

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1 looking back, I might wish I had grieved  
2 one of them.

3 Q. Okay.

4 Why is that?

5 A. Mr. Povse, who I do not know --  
6 I believe he's a tenured professor, of  
7 course, but his wife has a -- had a  
8 nontenured position at Marywood. And so  
9 looking back after I learned that, I  
10 thought there might have been a little  
11 conflict of interest there because if the  
12 committee didn't come up with the approved  
13 decision and President Munley, let's say,  
14 found out that Mr. Povse had supported me,  
15 that might not have been good for his  
16 wife. I'm not saying that would have  
17 happened. I'm just saying there would be  
18 what they call a potential conflict of  
19 interest.

20 Q. Okay.

21 And, again, you didn't assert  
22 any objection, correct?

23 A. I did not, no. I did not know  
24 that relationship at the time.

82 (Pages 322 to 325)

Page 326

1 MS. PEET: Okay. Let's change  
2 the tape.  
3 THE VIDEOGRAPHER: We're now  
4 off the record. The time is 4:52  
5 p.m. This ends disk number three.  
6 ---  
7 (At this time, a short break  
8 was taken.)  
9 ---  
10 THE VIDEOGRAPHER: We are now  
11 on the record. The time is 4:57 p.m.  
12 This starts disk number four.  
13 ---  
14 (At this time, a document was  
15 marked for identification as Exhibit  
16 Fagal-35.)  
17 ---  
18 BY MS. PEET:  
19 Q. Did you prepare this e-mail to  
20 Alan Levine dated April 25, 2012?  
21 A. Did I prepare? Would you  
22 rephrase the question?  
23 Q. Did you draft this e-mail?  
24 A. I believe I worked on this with

Page 327

1 my lawyer.  
2 Q. Okay.  
3 Anyone else?  
4 A. No.  
5 ---  
6 (At this time, a document was  
7 marked for identification as Exhibit  
8 Fagal-36.)  
9 ---  
10 BY MS. PEET:  
11 Q. Did you draft this e-mail and  
12 the document to be sent to the ad hoc  
13 committee?  
14 A. This is the May 6, 2012, one,  
15 Exhibit --  
16 Q. Correct.  
17 A. -- 36?  
18 Q. Uh-huh.  
19 A. Yes.  
20 Q. Okay.  
21 And you write that the  
22 progressive discipline policy doesn't  
23 provide for the person charged with the  
24 chance to present a defense but,

Page 328

1 nonetheless, you decided to submit a  
2 written defense to the charges, agreed?  
3 A. Yes. I thought it was -- yes.  
4 Q. Okay.  
5 Did anyone help you draft this?  
6 A. Yes.  
7 Q. All right.  
8 And who was that?  
9 A. It would have been Jonathan  
10 Cohen, my lawyer.  
11 Q. Anyone else?  
12 A. No.  
13 ---  
14 (At this time, a document was  
15 marked for identification as Exhibit  
16 Fagal-37.)  
17 ---  
18 BY MS. PEET:  
19 Q. Why did you e-mail the ad hoc  
20 committee on May 23, 2012, about your  
21 personnel file?  
22 A. As I read here, it says I've  
23 given Patricia Dunleavy permission to  
24 release the new documents in my personnel

Page 329

1 file. As I recall, my personnel file was  
2 released earlier in the semester or in the  
3 year and later on Marywood discovered that  
4 not all relevant items that they found,  
5 wherever they found them, had been turned  
6 over. And so Patricia Dunleavy sent me an  
7 e-mail asking if she could release those  
8 documents.  
9 Q. Did you have any concern that  
10 the committee would consider previous  
11 disputes that you had with the university  
12 in making its decision?  
13 A. I was only concerned in the  
14 sense that I would hope they would look  
15 at, you know, the surrounding details of  
16 what had occurred and not just say, oh, he  
17 got called on the carpet three times, so  
18 he must be a bad boy.  
19 Q. Do you agree that you had  
20 previous disputes with Marywood  
21 administration involving the issue of free  
22 speech?  
23 A. Yes.  
24 Q. And would you agree that with

83 (Pages 326 to 329)

Page 330

1 those previous issues you've had, you were  
2 never terminated?

3 A. Correct.

4 Q. Would you agree that the  
5 previous disputes that you had with  
6 Marywood about free speech but they never  
7 suspended you?

8 A. That's correct.

9 Q. To your knowledge, was an ad  
10 hoc committee -- I believe you testified  
11 the ad hoc committee was ultimately  
12 formed --

13 A. Yes.

14 Q. -- per your request, correct?

15 A. An ad hoc committee was formed  
16 to examine my -- I believe the phrase was  
17 termination and suspension.

18 Q. Okay.

19 And, to your knowledge, did the  
20 committee make a decision?

21 A. Yes.

22 Q. And what was that decision?

23 A. That I should be terminated.

24 Q. To your knowledge, did Sister

Page 332

1 the second committee that was formed about  
2 your suspension and termination and they  
3 found no wrongdoing on Munley's part?

4 A. I recall a grievance committee  
5 and the ad hoc committee but not a  
6 committee for the suspension.

7 Q. Okay.

8 Both the grievance committee  
9 and the ad hoc committee both concluded no  
10 wrongdoing on Sister Munley's part,  
11 correct?

12 A. I believe the charge for the  
13 grievance committee was to see whether  
14 procedures had been followed correctly and  
15 there was found no wrongdoing by President  
16 Munley's part. The ad hoc committee was  
17 not, I believe, examining whether Anne  
18 Munley did anything wrong but whether I  
19 did anything wrong. So...

20 Q. And did the ad hoc committee  
21 find that you did anything wrong?

22 A. Yes. They terminated -- they  
23 agreed with her decision to terminate me.

24 Q. Okay.

Page 331

1 Munley sit on that ad hoc committee?

2 A. Not to my knowledge.

3 Q. To your knowledge, did  
4 Dr. Levine sit on that committee?

5 A. Not to my knowledge.

6 Q. There were three members on  
7 that committee, correct?

8 A. Correct.

9 Q. And you selected one of those  
10 members, correct?

11 A. Correct.

12 ---

13 (At this time, a document was  
14 marked for identification as Exhibit  
15 Fagal-38.)

16 ---

17 BY MS. PEET:

18 Q. Did you ever see the ad hoc  
19 committee's findings with reference to  
20 your employment and tenure at Marywood?

21 A. I saw them recently in  
22 discovery.

23 Q. Okay.

24 Would you agree that this is

Page 333

1 And the folks on the ad hoc  
2 committee were different people than were  
3 on the grievance committee?

4 A. I believe they were all  
5 different, yes.

6 ---

7 (At this time, a document was  
8 marked for identification as Exhibit  
9 Fagal-39.)

10 ---

11 BY MS. PEET:

12 Q. Did you send this e-mail to the  
13 ad hoc faculty committee on July 6, 2012?

14 A. I sent this, yes.

15 Q. If the ad hoc committee agreed  
16 that you should have been terminated, what  
17 does it matter whether or not your  
18 suspension was justified?

19 A. Well, procedures say first  
20 things first. As part of the sequence,  
21 you do the suspension and then you see if  
22 there's any hope for remediation or any  
23 change that would maybe be satisfactory to  
24 the university from their point of view

84 (Pages 330 to 333)

Page 334

1 and then go on from there.

2 Q. If a committee who was formed  
3 to determine whether or not your behavior  
4 warranted termination determined that your  
5 behavior in fact warranted termination,  
6 wouldn't a committee to review the  
7 suspension based on the exact same conduct  
8 be moot?

9 A. I don't know if it'd be moot  
10 because if -- you might have somebody --  
11 if I could -- let's say somebody was  
12 accused of -- being a faculty member, they  
13 were accused of absconding funds from  
14 clubs treasury, and so there's enough  
15 evidence that came out and somebody says  
16 well, let's suspend professor -- this  
17 professor for doing this.

18 So let's say there was some  
19 evidence of irregularities on that  
20 committee. I might say, okay, this person  
21 is not a harm to anybody. We don't see  
22 this is going to affect the teaching.  
23 Let's see where it goes. And so the  
24 professor does not get suspended and then

Page 336

1 suspension? What substantively and --

2 A. There was no --

3 Q. -- purpose would that serve?

4 A. -- committee to -- I was  
5 suspended and I was not allowed to have a  
6 committee to review the suspension.

7 Q. If a committee -- and that's  
8 not my question.

9 A. Okay.

10 Q. If a committee substantively  
11 looks at your termination and concludes  
12 that your termination was appropriate --

13 A. Okay.

14 Q. -- which has happened here,  
15 correct?

16 A. Okay.

17 Q. Agreed?

18 A. Agreed.

19 Q. Then why have a committee  
20 review your suspension which is a lesser  
21 offense based on the exact same conduct?  
22 What purpose would that serve?

23 A. The purpose it would serve  
24 would be following the agreed procedures.

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1 it comes out that he or she had in fact  
2 squirrelled away not just 50 bucks that he  
3 forgot about recording but had been taking  
4 a lot off the top for years, then that  
5 could be grounds for terminating even  
6 though the person was not suspended  
7 initially.

8 And you could have -- of course  
9 if it says do the suspension and do the  
10 termination, if it was an egregious case  
11 you could say we'll have a suspension  
12 hearing today and a termination hearing in  
13 the afternoon, so we'll go morning,  
14 afternoon. We'll suspend and then we'll  
15 terminate and we'll follow our laws on the  
16 same -- our procedures on the same  
17 evidence, but at least you would follow  
18 procedures of doing the suspension first  
19 and then the termination.

20 Q. If a -- if a committee  
21 determines that your termination was  
22 justified on the same conduct for which  
23 you were suspended, why would a committee  
24 need to be formed to review your

Page 337

1 Q. Any other purpose?

2 A. I'll say no.

3 Q. Okay.

4 What damages did you incur from  
5 a committee that upheld a termination of  
6 employment but, in your opinion, didn't  
7 look at your suspension?

8 A. The damages would be somebody  
9 thinking they did not get a fair -- a fair  
10 deal. They did not have the -- should we  
11 say the law it followed which by itself is  
12 -- is not -- not right.

13 Q. Any other damages?

14 A. Do you mean financial damages?

15 Q. I'm asking you.

16 A. I don't know.

17 Q. Okay.

18 A. If I might say -- can I amend  
19 my answer a little bit?

20 Q. Sure.

21 A. By not having a suspension,  
22 there was no chance for remediation and  
23 that -- with remediation then perhaps an  
24 agreement could have been -- you know,

85 (Pages 334 to 337)

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1 then maybe I would not have been  
2 terminated.

3 - - -

4 (At this time, a document was  
5 marked for identification as Exhibit  
6 Fagal-40.)

7 - - -

8 BY MS. PEET:

9 Q. Did you receive this July 13,  
10 2012, letter from Sister Munley to you?

11 A. Yes.

12 Q. She says here that this was the  
13 second independent tenured faculty review  
14 accorded to you. Both faculty committees  
15 concurred with my decision.

16 Is that a true statement?

17 A. I -- the two committees we're  
18 presuming here are the grievance committee  
19 and the ad hoc committee on the  
20 termination, yes.

21 Q. And is that an accurate  
22 statement?

23 A. Yes.

24 Q. Okay.

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1 newspapers, Web sites?

2 A. My son was in the job market at  
3 the time, so I knew that there were Web  
4 sites. So I would go to the -- I think  
5 Inside Higher Education had some and the  
6 Chronicle of Higher Education had some job  
7 things, and I would look through -- look  
8 through those and there were big -- big  
9 listings, and then at some point in 2013 I  
10 saw the Chronicle of Higher Education had  
11 a service where you could -- you would  
12 sign up, you would say you were, let's  
13 say, an art professor looking for jobs in  
14 the Rochester, New York, vicinity within a  
15 certain radius. So I signed up to get the  
16 Chronicle of Higher Education job  
17 announcements.

18 Q. Okay.

19 Did you -- you have produced  
20 documents in this case about job postings  
21 that I guess you saw following your  
22 termination of employment.

23 Have you produced, to the best  
24 of your knowledge, all documents that

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1 She then says my decision to  
2 terminate your employment with Marywood  
3 University and your tenure effective  
4 April 3, 2012, stands.

5 A. Yes.

6 Q. Do you see that?

7 A. Uh-huh.

8 Q. Are you currently employed?

9 A. No.

10 Q. Have you looked for a job since  
11 your termination of employment at  
12 Marywood?

13 A. Yes.

14 Q. Okay.

15 When was the first time you  
16 looked for a job?

17 A. I was looking at newspaper  
18 advertisements in the Syracuse newspaper  
19 in the fall of 2012.

20 Q. Did you apply for any jobs?

21 A. No. I didn't see any that were  
22 applicable.

23 Q. Other than in the Syracuse  
24 newspaper, did you look at any other

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1 evidence job search efforts that you've  
2 undergone since your employment at  
3 Marywood was terminated?

4 A. Yeah. I don't -- I don't have  
5 -- when I would look through the  
6 classified ads in the Syracuse newspaper,  
7 I did not keep a record of that, but since  
8 2013 there's a record.

9 Q. Okay.

10 And everything that you have  
11 has been produced?

12 A. Yes.

13 Q. Okay.

14 Approximately how many -- how  
15 much time per week beginning in the fall  
16 of 2012 did you spend trying to find a  
17 job?

18 A. Those e-mail announcements  
19 would come out probably weekly. Sometimes  
20 you get two a week. It would depend  
21 perhaps on the season, and I would read  
22 those and scroll down the list depending  
23 how long the list was and that was  
24 probably -- to look at that list and I'd

86 (Pages 338 to 341)

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1 open the e-mail, you know, five or ten  
2 minutes, read -- read the description, see  
3 if anything looked promising.

4 Q. Did you spend more or less than  
5 one hour a week since the fall of 2012  
6 looking for a job?

7 A. It would probably be about --  
8 it would be less than one hour.

9 Q. Okay.

10 What were you doing with all of  
11 your spare time?

12 A. I did have some employment at  
13 the YMCA as a lifeguard instructor and  
14 teaching some swim classes. That's  
15 tapered off recently with a different  
16 aquatics director.

17 Q. Approximately how much money  
18 did you earn from the YMCA?

19 A. Depending on the year, I'd have  
20 to look. I think I have maybe -- maybe  
21 about \$500.00.

22 Q. You're an avid swimmer,  
23 correct?

24 A. Yeah. I swim regularly to try

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1 conceive how I could have said it.

2 Q. Why don't you tell us.

3 A. The Complaint I read just  
4 recently -- and I was surprised to read it  
5 -- was from two students, one name was  
6 Callahan and I can't remember the other.

7 Q. You don't need to mention the  
8 students on the record.

9 A. Okay.

10 And there was a complaint along  
11 the lines you said, and I'm thinking this  
12 is during the -- this is in August. It  
13 would be the first week of class. I  
14 wouldn't even know any students, and I  
15 said could I have said that. Number one,  
16 I'd say I would never have said that to a  
17 student.

18 Number two, if I had said that,  
19 it could have been -- and I don't say -- I  
20 don't think I did this, but it would have  
21 been along the lines of this is  
22 introduction to social science, we're  
23 going to examine human behavior, and it  
24 comes from many different sources, shall

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1 to stay in shape.

2 Q. Did you ever refer to students  
3 as thunder thighs and in words or  
4 substance tell them that they probably  
5 should spend more time in the pool than in  
6 your class?

7 A. I saw that, and the answer  
8 would be I would have to say I never told  
9 a student that they should do that.

10 Would you repeat the question,  
11 please?

12 Q. Sure.

13 Did you ever call any students  
14 thunder thighs?

15 A. No.

16 Q. Did you ever use the word  
17 "thunder thighs"?

18 A. I don't recall but I really  
19 don't think so.

20 Q. Okay.

21 So if a student said that you  
22 did, they would be lying?

23 A. Depends how they told the  
24 story. I could tell you how I can

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1 we say. One of those sources that people  
2 might have their behavior changed would be  
3 by economic incentives, and I'm trying to  
4 conceive how I could possibly have said  
5 such a thing.

6 I might have said some  
7 employers now even have wellness plans  
8 where they will subsidize your gym  
9 membership. Again, this would be me  
10 speaking in front of a whole class, and I  
11 can conceive of myself as saying so the  
12 incentive -- you know, the employers want  
13 employees to lower health costs, and lose  
14 weight, and lose -- you know, lose your  
15 thunder thighs. So you go to the -- you  
16 know, you're pool membership would be  
17 subsidized.

18 So it would have been -- if I  
19 had said such a thing, it would have been  
20 a very general context such as that. I  
21 would never have said to a student, you  
22 have thunder thighs, you should go  
23 swimming and not come to class. That --  
24 no.

87 (Pages 342 to 345)

Page 346

1 Q. Do you dispute that students  
2 made that complaint to the university?

3 A. The little bit I read seemed to  
4 me as if the students were in some sort --  
5 had been in some sort of trouble  
6 themselves, that they had violated some  
7 university rules and were consulting with  
8 somebody, I think, from student activities  
9 and there's some sort of conversation. So  
10 whether -- what the motives of the  
11 students to say such a -- such a thing was  
12 I have no idea.

13 Q. Do you know whether or not the  
14 university had problems enrolling students  
15 in your class?

16 A. Yes.

17 Q. Okay.

18 Why do you think that was?

19 A. Well, I was probably the  
20 hardest grader on campus, perhaps the  
21 hardest grader, and so sometimes if one  
22 can take a course and avoid -- you know,  
23 get a better grade off campus than on  
24 campus then I understand that incentive.

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1 Q. Are you aware of a Muslim  
2 student complaining -- filing a civil  
3 complaint against you about a cartoon that  
4 you posted on your door?

5 A. Yes.

6 Q. And what was the cartoon about?

7 A. The cartoon -- well, there was  
8 -- there as a famous cartoon about the  
9 Muhammad bomb cartoon where the Danish  
10 embassies were bombed because  
11 Jyllands-Posten had posted a -- had  
12 published drawings of Muhammad, and over  
13 the years I would often have news stories  
14 on my door of various -- various kinds,  
15 and this was a news story. I had that on  
16 my door.

17 I had -- in terms of cartoons,  
18 there was another one I might have had --  
19 I don't know which -- I can't remember  
20 which cartoon he was complaining about  
21 specifically at this point. That might  
22 have been it.

23 Q. Is there a lot of them?

24 A. At one point, I might have had

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1 a -- again, a newsworthy cartoon by  
2 another European person. I had a joke I  
3 think he was -- Akhar(ph) was complaining  
4 about. It was a -- it wasn't a cartoon.  
5 It was a photograph of about eight nuns  
6 from 1958 or so, based on their hats, and  
7 they were all carrying 22 rifles. They  
8 had been to the rifle range or something,  
9 and so I had a joke up there about Islamic  
10 terrorists, radical Muslim committed a  
11 suicide bombing and died himself. These  
12 would be the 72 virgins he would see in  
13 heaven.

14 Q. Do you understand how a Muslim  
15 could be offended by that?

16 A. Yes, I guess I do.

17 Q. In your complaint, part of the  
18 relief that you ask for is to be returned  
19 to Marywood.

20 Is that something you want?

21 A. As I get older -- you know, if  
22 I did go back, it would be for probably a  
23 couple of years because I'm 70 years old  
24 now, but I would do it.

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1 ---

2 (At this time, a document was  
3 marked for identification as Exhibit  
4 Fagal-41.)

5 ---

6 BY MS. PEET:

7 Q. Who's Linda Rose?

8 A. Linda Rose is my -- one of my  
9 two sisters.

10 Q. Okay.

11 And you're e-mailing with her  
12 on June 6, 2012.

13 Do you see that?

14 A. Uh-huh.

15 Q. And sort of in the middle of  
16 the page you write to her I don't really  
17 want the job back but part of me would  
18 love to go back to work for even just a  
19 year just to say -- in caps -- fuck you, I  
20 won.

21 Do you see that?

22 A. Let me see.

23 Now, where are we?

24 Q. The middle of the page.

88 (Pages 346 to 349)

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1 A. Yes. I don't really want the  
2 job but part of me -- right. You know,  
3 with all the hassles, there's certain bad  
4 parts about going back to work but part of  
5 me would love to go back to work for even  
6 just a year just to say what I -- what's  
7 here.  
8 Q. The fuck you, I won?  
9 A. Fuck you, I won.  
10 Q. And the job that you're talking  
11 about there, that would be the Marywood  
12 University job --  
13 A. Yes.  
14 Q. -- correct?  
15 A. That's correct.  
16 ---  
17 (At this time, a document was  
18 marked for identification as Exhibit  
19 Fagal-42.)  
20 ---  
21 BY MS. PEET:  
22 Q. Who is Jeffy Benedict?  
23 A. She's my other sister.  
24 Q. Okay.

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1 You e-mail Jeffy on  
2 December 25, 2011, at 9:40 p.m., so  
3 Christmas 2011.  
4 Do you see that?  
5 A. Yes.  
6 Q. The bottom e-mail, and you  
7 write to her, hi, Jeffy, just in case I  
8 need or want one, please see if Jim can  
9 come up with a few names of good labor,  
10 dash, employment law lawyers, dash, firms  
11 in PA, period.  
12 A. Yes.  
13 Q. Do you see that?  
14 A. I do see that.  
15 Q. Okay.  
16 And who is Jim?  
17 A. Jim is Jim Benedict.  
18 Q. Would that be her husband?  
19 A. That's her husband, yes.  
20 Q. Your brother-in-law?  
21 A. My brother-in-law.  
22 Q. Okay.  
23 And then her response is right  
24 above that.

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1 Do you see that?  
2 A. Yes.  
3 Q. And she wrote, Fred, I asked  
4 Jim -- her husband, correct?  
5 A. Yes.  
6 Q. And he has no clue about any  
7 labor lawyers in Penn --  
8 A. Right.  
9 Q. -- period.  
10 And Penn I would assume is  
11 Pennsylvania --  
12 A. Pennsylvania, uh-huh.  
13 Q. -- correct? Okay.  
14 And then she -- and I know he  
15 thinks this is a little nuts at your age,  
16 period.  
17 A. Right.  
18 Q. Okay.  
19 He does not want to get  
20 involved in any way in this one.  
21 A. Right.  
22 Q. See that?  
23 A. Uh-huh.  
24 ---

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1 (At this time, a document was  
2 marked for identification as  
3 Exhibit-43.)  
4 ---  
5 BY MS. PEET:  
6 Q. Why were you inquiring about a  
7 labor or employment lawyer in December of  
8 2011?  
9 A. Because I had started to work  
10 on the videos and I realized that they  
11 might be problematic.  
12 Q. And you might need a lawyer?  
13 A. If worse came to worst.  
14 Q. Okay.  
15 Exhibit-43 seems to be a letter  
16 that you sent to Onondaga Community  
17 College --  
18 A. Yes.  
19 Q. -- on January 11, 2013.  
20 Do you see that?  
21 A. Correct.  
22 Q. Okay.  
23 And in the first introductory  
24 paragraph, you tell the community college

89 (Pages 350 to 353)



Page 354

1 that you got fired last year over a free  
2 speech issue and then direct them to your  
3 resume for more information.

4 Do you see that?

5 A. Yes.

6 Q. Was that your practice to tell  
7 any college or university to whom you were  
8 seeking employment about this free speech  
9 issue for which you got fired over at  
10 Marywood, in your opinion?

11 A. Well, this is a sample of one,  
12 so this was my practice because this was  
13 the only application that got this far.

14 Q. Okay.

15 Would you agree with -- that  
16 this is the only application you submitted  
17 to any university or college since April  
18 of 2012?

19 A. Yes.

20 ---

21 (At this time, a document was  
22 marked for identification as Exhibit  
23 Fagal-44.)  
24 ---

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1 BY MS. PEET:

2 Q. Would you agree that this is  
3 the resume that you submitted to Onondaga  
4 Community College?

5 A. Yes. This seems to be part of  
6 their online application form as I recall.

7 Q. Okay.

8 And on the third page of this  
9 document, it's a one-page resume from you.

10 Do you see that?

11 A. Yes.

12 Q. And the second to last  
13 paragraph is called other perhaps of  
14 interest.

15 A. Yes.

16 Q. Do you see that?

17 A. Uh-huh.

18 Q. And then you talk about the  
19 poster, and this YouTube videos, and your  
20 firing.

21 Do you see that?

22 A. Yes.

23 Q. Do you think it's a good  
24 practice to include that in a resume for

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1 employment?

2 A. I think it shows honesty and it  
3 doesn't hide anything. If I was an  
4 employer and somebody applied and they did  
5 not include that, and then the employer  
6 Googles the person and says what the heck  
7 is going on here, why didn't you tell me  
8 about that. I thought it was better to be  
9 honest and straightforward.

10 Q. Okay.

11 Did you receive any call back  
12 or interview from the community college?

13 A. Not to go in for an interview.  
14 I think it might have been some form. I  
15 can't recall anything special.

16 Q. Okay.

17 Do you know why it is that they  
18 didn't pursue you further?

19 A. I was really looking for a  
20 full-time job and this might -- they might  
21 have gone with adjuncts cheaper. I don't  
22 know. Because I had worked there before,  
23 so I figured they knew me. So that was...  
24 ---

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1 (At this time, a document was  
2 marked for identification as Exhibit  
3 Fagal-45.)  
4 ---

5 BY MS. PEET:

6 Q. Would you agree this is an  
7 e-mail between you and Bill Ziegelbauer,  
8 February 5, 2015?

9 A. Yes.

10 Q. Okay.

11 And if you look down at the  
12 bottom of the first page, the paragraph  
13 says I am probably overdoing this, Rule 26  
14 damages stuff.

15 Do you see that?

16 A. Yeah, bottom of the first --

17 Q. First page.

18 A. -- page. Oh, yeah.

19 Q. I'm going to read --

20 A. The paragraph, yes. I'm  
21 probably overdoing this, uh-huh. I see  
22 that.

23 Q. I am probably overdoing this  
24 Rule 26 damages stuff, but at the worst I

90 (Pages 354 to 357)

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1 will make the other side spend a lot of  
2 hours poring through what I have done.  
3 What's the old phrase? Baffle them with  
4 bullshit and bury them in paper.

5 A. Yes.

6 Q. Was that your litigation  
7 strategy here?

8 A. No.

9 Q. Were you trying to bury them in  
10 paper and baffle them with bullshit to  
11 increase Marywood's litigation costs?

12 A. No.

13 Q. Were you trying to make the  
14 other side spend a lot of hours poring  
15 through what they have done so we can --  
16 Marywood can spend more money on this  
17 litigation?

18 A. No.

19 Q. What were you saying here?

20 A. I was developing a  
21 comprehensive report about the damages and  
22 I was using every economist skill I had to  
23 make spreadsheets that clearly were  
24 commented and explained all the details of

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1 side spend a lot of hours poring through  
2 what I have done.

3 A. Right. Because the way I  
4 understand litigation on this end, it  
5 would be if it comes toward trial, let's  
6 say, then when it comes to economic  
7 damages one would be hiring forensic  
8 economics experts and they're not cheap.  
9 I know that.

10 And so I wanted to do all the  
11 heavy duty forensic economic type work  
12 that could possibly be done by me, get it  
13 done early, and so the Rule 26 damages  
14 computation report would be as complete as  
15 possible, really complete. And then I was  
16 hoping further on down the road that  
17 perhaps a forensic expert might look at  
18 what I did and say, oh, Fagal has done  
19 most of my homework. It will take me many  
20 fewer hours, therefore, to write up a  
21 report that I can present as something I  
22 would testify to as my analysis. And so I  
23 was trying to do huge amounts of work  
24 ahead of time.

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1 each calculation of damages, and the basic  
2 report, you know, with revisions is about  
3 42 pages not including appendixes, but the  
4 reference here to baffle them with  
5 bullshit is -- it's a joke, obviously, but  
6 it refers -- I'm really referring to the  
7 fact that probably most lawyers are not  
8 economists and when they read my Rule 26  
9 damages computation report, if they wanted  
10 to truly understand it -- but I tried to  
11 make it as clear as possible, but if they  
12 wanted to truly understand where each  
13 figure came from, they would need good  
14 spreadsheet skills and that would take a  
15 lot of good effort on their part, and  
16 that's what I was referring to.

17 Q. Do you understand how people  
18 just might not get your humor?

19 A. Yes. If you look at the next  
20 sentence, but on the other hand, I want to  
21 early on put the best foot forward.

22 Q. Right.

23 But if you read the sentence  
24 before, it says I want to make the other

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1 Q. How much have you spent in  
2 litigation fees to date?

3 MR. COHEN: No, don't answer  
4 that.

5 MS. PEET: Are you instructing  
6 him not to answer?

7 MR. COHEN: Can we go off the  
8 record for a second?

9 MS. PEET: Sure.

10 ---

11 THE VIDEOGRAPHER: We are now  
12 off the record. The time is 5:35  
13 p.m.

14 ---

15 MR. COHEN: Can I just get a  
16 sense of what the purpose of your --  
17 this question is?

18 MS. PEET: Which question?

19 MR. COHEN: How much have you  
20 spent on litigation fees.

21 MS. PEET: Because it goes --  
22 if you read the thousands of  
23 documents he's produced, he talks  
24 about the fact that he's -- what his

91 (Pages 358 to 361)

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1 budget is going to be in order to  
2 make Marywood spend as much as  
3 possible; hence, baffle them with  
4 bullshit and bury them in paper.

5 If you're instructing him not  
6 to answer, that's fine. We can take  
7 it up with the court if necessary.  
8 That's up to you.

9 MR. COHEN: I'm instructing you  
10 not to answer for now.

11 - - -

12 THE VIDEOGRAPHER: We are now  
13 on the record. The time is 5:36 p.m.

14 - - -

15 BY MS. PEET:

16 Q. I've asked you what you have  
17 spent on litigation fees to date and your  
18 attorney has instructed you not to answer.

19 A. Right.

20 Q. And I assume you're going to  
21 take your attorney's instruction.

22 A. I'll take my attorney's advice.

23 Q. Okay.

24 Do you know Tony Spinillo?

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1 e-mailed him that at his Marywood e-mail  
2 account?

3 A. I hadn't thought about it. We  
4 always had e-mail conversations or back  
5 and forth with his personal account.

6 Q. Did you ever e-mail Tony since  
7 you have left at his Marywood e-mail  
8 account?

9 A. Since I left Mary -- could you  
10 repeat the question, please?

11 Q. Have you ever e-mailed Tony  
12 Spinillo at his Marywood e-mail account  
13 since you've left Marywood?

14 A. I'll say I don't know but I  
15 don't think so.

16 Q. Has Tony provided you with any  
17 documentation or information about this  
18 case?

19 A. No.

20 Q. Who, if anyone, do you speak to  
21 that is employed at Marywood?

22 A. I have e-mail contact with  
23 Marty O'Connor.

24 Q. Anyone else?

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1 A. Yes.

2 Q. And is he chief intelligence  
3 officer at Marywood University?

4 A. I believe the title is chief  
5 information officer.

6 Q. At Marywood?

7 A. Yes.

8 Q. Did you ever tell him to keep  
9 his eyes and ears open?

10 A. That sounds like something I  
11 would have written in an e-mail.

12 Q. Why did you do that?

13 A. Oh, if he heard anything, any  
14 chatter about the case or something or  
15 whatever is going on at Marywood that  
16 might be of interest to me. That's all.

17 Q. Why would you do that -- e-mail  
18 that to Tony at his private e-mail  
19 account, not his Marywood University  
20 e-mail account?

21 A. We often e-mailed each other  
22 back and forth on, you know, short quick  
23 things about whatever we were doing.

24 Q. Any reason you wouldn't have

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1 A. Who's currently employed at --  
2 currently employed at Marywood? Is that  
3 the question? Nobody -- nobody regularly.  
4 I might -- I might say if there's a story  
5 in the newspaper about Africa, I might  
6 have e-mailed Jeremy Rich in the past year  
7 or so and said, you know, how are the kids  
8 doing, but nothing -- I believe that's it.

9 Q. Have you --

10 A. Oh, wait. Excuse me, one more.  
11 Chris Troiani who works at the Regina  
12 desk. I'll have an occasional friendly  
13 e-mail with her.

14 Q. Have you spoken to Chris,  
15 Marty, or anyone else at Marywood about  
16 this case?

17 A. No.

18 - - -

19 (At this time, photographs were  
20 marked for identification as Exhibit  
21 Fagal-46.)

22 - - -

23 BY MS. PEET:

24 Q. Mr. Fagal, these pictures were

92 (Pages 362 to 365)

Page 366

1 just produced to us.

2 A. Yes.

3 Q. What are they?

4 A. I was going through my -- I was  
5 getting a new phone or my phone died. My  
6 Note 3 died and I was looking for Note 3  
7 and I found my old Droid X phone. I had a  
8 backup file from there from years ago, and  
9 so I had forgotten that I took these  
10 pictures, and these were quickly taken, I  
11 guess, on November 28th showing where some  
12 posters I had hung that were no longer  
13 there on November 28th. I had gone  
14 around. I had always planned to after the  
15 speech was over. I had always planned to  
16 take down the posters just to clean up and  
17 not have them up any longer than they  
18 needed to be. That's why I used the blue  
19 painter's tape, so it'd be easy to take  
20 off.

21 And so as I was going around to  
22 take off posters that had been hung up  
23 that morning, I was finding that -- and  
24 any others that might, you know, be

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1 evidence that had not been torn down  
2 before, I found that posters where I had  
3 hung them were missing. So -- from where  
4 I had hung them that very day. So I just  
5 took quick pictures.

6 MS. PEET: I have no further  
7 questions, but I do want to put on  
8 the record that we just received an  
9 additional document production from  
10 you. It was sent to us over the  
11 weekend which we couldn't access  
12 until Monday for technical reasons;  
13 one of which was a 141-page damages  
14 analysis.

15 We obviously haven't gone  
16 through it in fine detail yet but we  
17 reserve the right to bring you back  
18 if we need to given the obvious late  
19 production and your deposition being  
20 depose -- being noticed for today.

21 THE WITNESS: Yes. That would  
22 be an updated Rule 26 from January  
23 25th, I believe.

24 MR. COHEN: How much time do we

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1 have left?

2 ---

3 THE VIDEOGRAPHER: We're now  
4 off the record. The time is 5:42  
5 p.m.

6 ---

7 (At this time, a short break  
8 was taken.)

9 ---

10 THE VIDEOGRAPHER: We are now  
11 on the record. The time is 5:46 p.m.

12 ---

13 BY MR. COHEN:

14 Q. Okay.

15 Fred, we know each other. I'm  
16 Jonathan Cohen. I'm your attorney. I  
17 just have a few questions for you.

18 And earlier today, do you  
19 remember being asked -- you were shown a  
20 copy of your interrogatory answers, and  
21 one of the questions was something to the  
22 effect of are you aware of any other  
23 Marywood tenured professor who --

24 A. Had done something similar to

Page 369

1 what I did?

2 Q. -- who had done things similar  
3 to what you had done, and you had written  
4 Laurie McMillan, correct?

5 A. Correct.

6 Q. And Ms. Peet had asked you a  
7 little bit about it.

8 And do you have any more  
9 information to provide about why  
10 Ms. McMillan's case is similar to your  
11 case?

12 A. Well, besides the public  
13 protest in her case of carrying a sign, a  
14 gathering I think for the 100th  
15 anniversary, I remember reading in -- I  
16 think one of the -- either The Wood Word  
17 or -- I believe it was The Wood Word or  
18 the Scranton Times, but I think it was The  
19 Wood Word about Laurie McMillan was upset  
20 with decision-making at the university in  
21 terms of finances and the money spent on  
22 learning commons, and the Scranton School  
23 for the Deaf property, and various  
24 expensive renovations to the president's

93 (Pages 366 to 369)

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1 house.

2 And so there's general worry  
3 about what was seen by Ms. McMillan and I  
4 understand from others about financial  
5 mismanagement, and so Ms. McMillan had  
6 some fliers that she placed in the rotunda  
7 and in public places around campus, and in  
8 one case Ann Boland-Chase, who is an  
9 administrator, again, according to the  
10 news story went around and picked up those  
11 fliers and confiscated them, if you will.

12 And I guess there was a quote  
13 -- a story in that news story about how  
14 faculty members were quite upset, many of  
15 them. They -- according to the news  
16 story, there had been attempts through the  
17 faculty senate to work with the  
18 administration, but there were many  
19 professors who were not happy with what  
20 had happened. And Alan Levine was quoted  
21 something to the effect of, well, if  
22 anybody was upset, they could come in and  
23 we could have ways of discussing that in  
24 private.

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1 And so in that sense,  
2 Ms. McMillan had protested decision-making  
3 by the president and I believe Joe Garvey  
4 and had not gotten any satisfaction, and  
5 so she turned to fliers, or handouts, or  
6 something similar placed around campus  
7 which had been gathered up, at least some  
8 of them by -- from what I read -- again, I  
9 was not there, by Ann Boland-Chase. So I  
10 think the similarities are to be drawn by  
11 somebody who looks at both cases.

12 Q. Okay.

13 Also, earlier today Ms. Peet  
14 asked you, I think in sum and substance,  
15 do you have any evidence that anyone in  
16 the Marywood administration took down your  
17 posters because they didn't like the FIRE  
18 organization or its principles.

19 Do you remember something like  
20 that?

21 A. Yes. I remember the --

22 MS. PEET: Objection,  
23 mischaracterization of question.

24 THE WITNESS: Pardon me.

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1 MS. PEET: I'm just asserting  
2 an objection for the record.

3 BY MR. COHEN:

4 Q. I didn't ask a question yet  
5 either.

6 A. Okay.

7 Q. I just said do you remember  
8 that.

9 A. Yes.

10 Q. Yeah.

11 Do you have Exhibit-10 in front  
12 of you still? Can you turn to that?

13 A. I'd have to dig and have luck  
14 finding it some sort of way. I did find  
15 10.

16 Q. Okay.

17 And, briefly, what is this  
18 document again?

19 A. I had met with Alan Levine and  
20 tried to understand who tore down the  
21 posters and why, and I had -- we  
22 disagreed. We couldn't come to agreement  
23 about what had happened, and that's why  
24 Alan wrote we have a different

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1 understanding of what transpired.

2 Q. And so you and Dr. Levine had a  
3 meeting about the removal of the FIRE  
4 posters, correct?

5 A. Yes. I tried to clear that up.

6 Q. And you had made a number of  
7 requests, you know, including to be  
8 reimbursed?

9 A. Yes.

10 Q. Do you remember that?

11 A. Yes.

12 Q. We talked --

13 A. I showed him that -- that  
14 letter and he asked for the e-mail copy,  
15 and I sent it to him and he forwarded that  
16 to President Munley.

17 Q. Right.

18 And do you see in this  
19 Exhibit-10, this letter from Dr. Levine,  
20 in the second paragraph, first sentence,  
21 it says Sister Anne Munley and I remain  
22 open to future presentations that are not  
23 in conflict with our mission statement or  
24 core values and are organized according to

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1 our policies and practices?

2 A. Yes.

3 Q. From that sentence, did you  
4 understand that Dr. Levine was suggesting  
5 that presentations from FIRE are not in  
6 line -- not in -- are not in line with  
7 Marywood's mission statement or core  
8 values?

9 MS. PEET: Objection, absolute  
10 leading. Why don't you rephrase  
11 that.

12 MR. COHEN: Excuse me.

13 MS. PEET: I think you should  
14 rephrase that.

15 BY MR. COHEN:

16 Q. First sentence of paragraph  
17 two, why don't you explain to me -- do you  
18 understand Dr. Levine to have been making  
19 any characterizations about FIRE?

20 MS. PEET: Objection, leading.

21 BY MR. COHEN:

22 Q. You can answer.

23 A. I did not take this as  
24 necessary -- I took this more as

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1 trying to keep the attendance down.

2 And so there was certain animus  
3 shown in those e-mails I read in discovery  
4 against FIRE. Whether they would actually  
5 step up publicly and not allow FIRE to  
6 come in the future, I would assume they  
7 wouldn't have done that but they might not  
8 have given any money.

9 MR. COHEN: I have no further  
10 questions.

11 MS. PEET: Just a couple of  
12 follow-ups.

13 ---

14 BY MS. PEET:

15 Q. With reference to the McMillan  
16 incident that your attorney just talked to  
17 you --

18 A. Yes.

19 Q. -- about, again, you have all  
20 of this information from what you read in  
21 a newspaper, correct?

22 A. That's correct.

23 Q. Are you aware, either from  
24 reading the newspaper or otherwise, that

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1 boilerplate university, shall I say,  
2 reason for not allowing a debate on  
3 something where the other side of the  
4 debate would be against what were  
5 perceived as the university's core values.

6 So it could be in some  
7 instances if there was an abortion debate,  
8 pro and anti-abortion, perhaps if the  
9 university -- I'm not saying Marywood --  
10 said we can't have that discussion even  
11 raised on our campus because it's against  
12 our core values, so, therefore, we will  
13 not allow a debate.

14 Or I know that the university  
15 -- I know there was a case of a student a  
16 few years ago who tried to start an  
17 atheist club at the university. That was  
18 denied. So I didn't -- when I read this,  
19 I did not think it necessarily pertained  
20 to FIRE but it could have, you know. They  
21 didn't -- certainly they did not like FIRE  
22 I don't think. I think there's evidence  
23 of that by e-mails in the discovery where  
24 they're talking about Will Creeley and

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1 after Ms. McMillan protested and Ann Chase  
2 took down the fliers, whether or not she  
3 made a video depicting Sister Munley as  
4 Hitler?

5 A. I have no knowledge.

6 MS. PEET: No further  
7 questions.

8 ---

9 THE VIDEOGRAPHER: We are now  
10 off the record. The time is 5:56  
11 p.m. This ends disk number four and  
12 today's deposition.

13 ---

I, Edward J. Ruggeri,  
Registered Professional Reporter,  
Certified Court Reporter and Notary  
Public, do hereby certify that the  
foregoing is a true and accurate  
transcript of the stenographic notes taken  
by me in the aforementioned matter.

— — —

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PAGE LINE

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# Exhibit 17



**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FREDERICK F. FAGAL, JR.	:	
	:	
Plaintiff,	:	
	:	<b>CIVIL ACTION</b>
v.	:	
	:	<b>NO.: 3:14-cv-02404-ARC</b>
MARYWOOD UNIVERSITY,	:	
	:	
Defendant.	:	

**DEFENDANT’S ANSWERS AND OBJECTIONS TO PLAINTIFF’S FIRST  
SET OF INTERROGATORIES DIRECTED TO DEFENDANT**

Defendant, Marywood University (“Defendant”) hereby submits its answers and objections to Plaintiff, Frederick F. Fagal, Jr.’s (hereinafter “Plaintiff”), First Set of Interrogatories (“Interrogatories”).

**GENERAL OBJECTIONS**

1. Defendant objects to all interrogatories to the extent that they seek information which is beyond the scope of the Federal Rules of Civil Procedure.
2. Defendant objects to these interrogatories to the extent that they purport to be “contention” interrogatories and otherwise attempt to assert, restate or summarize the facts, claims or defenses of Defendant.
3. Defendant objects to all interrogatories to the extent that they are not described with reasonable particularity, are overly broad, are unduly burdensome,

or are not reasonably calculated to lead to the discovery of admissible evidence. More particularly, Defendant objects to any interrogatory to the extent that it is not reasonably limited in time, place or overly broad, not reasonably calculated to lead to the discovery of admissible evidence and are unduly burdensome.

4. Defendant objects to all interrogatories to the extent that they seek confidential information, proprietary information and/or trade secrets.

5. Defendant objects to each of these interrogatories to the extent they purport to impose any duty to supplement responses greater than that required by Fed. R. Civ. P. 26(e). Pursuant to ongoing discovery in this matter, Defendant reserves the right to supplement these responses subsequent to the forwarding of these answers and objections.

6. Defendant reserves the right to incorporate all or any portion of one answer by reference into another answer.

7. Defendant objects to Plaintiff's interrogatories to the extent that they seek the discovery of information protected by the attorney/client privilege, the attorney work-product doctrine or other applicable privilege.

8. Defendant incorporates by reference each and every objection set forth above into each response to each interrogatory as fully as though set forth therein at length.

### **INTERROGATORIES**

1. In Paragraph No. 20 of Defendant's Answer to Plaintiff's Amended Complaint and Affirmative and Other Defenses (hereinafter your "Answer"), you admitted to removing some of Plaintiff's posters announcing the FIRE speaker. Did you or anybody working for you instruct or suggest that these posters be removed? If so, who made this instruction or suggestion? If the instruction or suggestion was oral, please state its content in as close to verbatim form as possible.

**ANSWER:** Defendant is unaware of the identity of the individual(s) who removed Plaintiff's posters announcing the FIRE speaker, other than Dr. Alan Levine, who removed one poster. Additionally, Defendant is unaware of anyone who instructed or suggested that Plaintiff's FIRE speaker posters be removed.

2. Do you contend that Professor Fagal was an at-will employee of Marywood at any time between November 1, 2011 and August 31, 2012? If so, explain the basis for this contention in detail.

**ANSWER:** No.

3. Prior to January 23, 2012, did you or anybody who worked for you provide to Professor Fagal any oral warning, written warning, or any opportunity for monitored assistance relating to the email and videos referenced in Paragraph Nos. 23 and 24 of the Amended Complaint? If so, please provide a detailed

description of each such oral warning, written warning, and opportunity for monitored assistance.

**ANSWER:** Defendant objects to this interrogatory as ambiguous and vague because Defendant is unable to determine the meaning of “monitored assistance.” Defendant is willing to respond to a clearer and narrower interrogatory request.

4. Did your Vice President for Academic Affairs, Dr. Alan Levine, participate in any way in the decision to suspend Professor Fagal or to maintain this suspension thereafter? If so, please describe Dr. Levine’s participation in as much detail as possible.

**ANSWER:** Dr. Levine supported President Munley’s decision to suspend Professor Fagal and was aware of – and helped orchestrate – the January 23, 2012 meeting where Professor Fagal was suspended, as outlined in DEF002760.

5. If Dr. Levine has made any statements—oral or written—relating to the email or videos referenced in Paragraph Nos. 23 and 24 of the Amended Complaint, please describe the content of these statements in as close to verbatim form as possible, including the date and recipients of such statements.

**ANSWER:** Defendant objects to this interrogatory as unduly burdensome and overly broad in time and scope. Defendant cannot possibly know all statements, oral or written, that Dr. Levine has made in the past four years regarding the e-mail or videos referenced in Paragraph Nos. 23 and 24 of the Amended Complaint.

Subject to and without waiver of these objections, see documents previously produced by Defendant, including various e-mails from Dr. Levine.

6. In Paragraph No. 31 of your Answer, you denied that there was no immediate harm to Professor Fagal or to others threatened by Professor Fagal's continuance in his faculty position. Please explain the basis for your denial in as much detail as possible.

**ANSWER:** Defendant denies that there was no immediate harm to others as Plaintiff's continued employment would create emotional harm to members of the administration, faculty, and student body who were offended and impacted by Plaintiff's actions. Additionally, Defendant sought to prevent further reputational harm to the University after Plaintiff, a tenured professor, made a mockery of the President, the University's executive staff, and the University community as a whole by drafting and creating the e-mail and videos referenced in Paragraph Nos. 23 and 24 of the Amended Complaint.

7. In Paragraph No. 31 of your Answer, you denied that no Marywood official or representative had ever stated to Professor Fagal that there was no immediate harm to him or to others threatened by his continuance in his faculty position. Please explain the basis for your denial in as much detail as possible, including the date and substance of each and every such statement by a Marywood official or representative.

**ANSWER:** On or about January 23, 2012, President Munley informed Plaintiff that his actions caused harm to the University, faculty members, and was in direct conflict with the University's core values.

8. For each academic year, please provide the actual amount of extra dollars that your primary provider of health insurance would have charged (or is predicted to charge) you to add Plaintiff and his wife (born [REDACTED], 1946 and [REDACTED], 1958, respectively) to the standard family health insurance plan provided by the insurer had he been employed by you between September 1, 2012 and August 31, 2018.

**ANSWER:** Defendant objects to this interrogatory to the extent that it requires a calculation of future health care costs. Subject to and without waiver of this objection, Defendant's annual fee for an employee and spouse on an HMO plan for 2011-2012 was \$12,983.88; for 2012-2013 was \$13,503.24; for 2013-2014 was \$13,503.24; for 2014-2015 was \$14,043.36; and for 2015-2016 was \$15,377.52. This option was discontinued for the 2016-2017 year and has been replaced by an EPO plan.

9. Identify any and all fact witnesses that you intend to call at trial.

**ANSWER:** Defendant objects to this interrogatory as premature and because it seeks to elicit the mental impressions, conclusions, opinions and legal theories of Defendant's attorneys and seeks disclosure of Defendant's attorneys' work

product. Subject to and without waiver of these objections, Defendant will provide a list of witness at the appropriate time. Defendant reserves the right to call as witnesses all individuals identified in either parties' Initial Disclosures or discovery responses.

10. Identify any and all expert witnesses that you intend to call at trial.

**ANSWER:** Defendant objects to this interrogatory as premature and because it seeks to elicit the mental impressions, conclusions, opinions and legal theories of Defendant's attorneys and seeks disclosure of Defendant's attorneys' work product. Subject to and without waiver of these objections, as of the date of these responses, Defendant has not retained an expert. If and when Defendant retains an expert, a response to this request will be provided.

11. Identify any and all exhibits that you intend to introduce at trial.

**ANSWER:** Defendant objects to this interrogatory because it seeks to elicit the mental impressions, conclusions, opinions and legal theories of Defendant's attorneys and seeks disclosure of Defendant's attorneys' work product. Subject to and without waiver of this objection, Defendant has not decided what documents it intends to introduce as exhibits at the time of trial. Defendant will identify its exhibits in accordance with the Court's scheduling order.

12. Identify any and all facts that you believe to support your affirmative defenses.

**ANSWER:** Defendant objects to this interrogatory as repetitive and duplicative of Request No. 25 in Plaintiff's First Request for Production of Documents. Subject to and without waiver of this objection, see documents previously produced by Defendants.

13. Did any attorney or other representative of Jackson Lewis LLP communicate—in writing or orally—with any members of Marywood's Faculty Grievance Committee while that committee was deliberating on Plaintiff's grievance filed on February 22, 2012? If so, please identify all individuals participating in each communication, the time and date of each such communication, and—if the communication was oral—describe the content of such communication in as much detail as possible.

**ANSWER:** Defendant objects to this interrogatory because it requests information protected by attorney-client privilege and/or seeks to elicit the mental impressions, conclusions, opinions and legal theories of Defendant's attorneys and seeks disclosure of Defendant's attorneys' work product.

14. Did any attorney or other representative of Jackson Lewis LLP communicate—in writing or orally—with any members of Marywood's Faculty Senate Ad Hoc Hearing Committee while that committee was deliberating on President Munley's recommendation to terminate and/or suspend Plaintiff? If so, please identify each and every individual that participated in each communication,



the time and date of each such communication, and—if the communication was oral—describe the content of such communication in as much detail as possible.

**ANSWER:** Defendant objects to this interrogatory because it requests information protected by attorney-client privilege and/or seeks to elicit the mental impressions, conclusions, opinions and legal theories of Defendant's attorneys and seeks disclosure of Defendant's attorneys' work product.

15. Please provide the exact times and dates that each word processing file or Google Docs file used to generate President Munley's letter to Plaintiff dated January 24, 2012 was first created and last modified.

**ANSWER:** Defendant objects to this interrogatory as unduly burdensome and irrelevant.


16. Please provide the exact times and dates that each word processing file used to generate Patricia Dunleavey's typewritten notes (DEF000143) about the January 23, 2012 meeting between Plaintiff, President Munley, herself, and Michael Foley, was first created and last modified.

**ANSWER:** Defendant objects to this interrogatory as unduly burdensome and irrelevant.

17. With as much precision as possible, state the time and date that President Munley decided (in her own mind) to recommend Professor Fagal's termination and suspension.

**ANSWER:** Defendant objects to this interrogatory because it seeks information in Plaintiff's possession and/or equally available. Subject to and without waiver of this objection, Defendant refers Plaintiff to President Munley's deposition testimony at 47:8-48:18.

**JACKSON LEWIS P.C.**

  
Stephanie J. Peet. (PA I.D. 91744)

Asima J. Ahmad (PA I.D. 316001)

Three Parkway

1601 Cherry Street, Suite 1350

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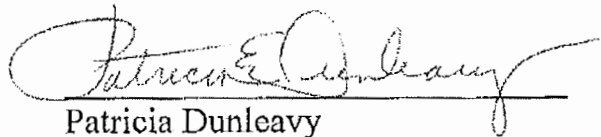
asima.ahmad@jacksonlewis.com

*ATTORNEYS FOR DEFENDANT*

DATED: August 5, 2016

**VERIFICATION**

I, Patricia E. Dunleavy, Ph.D., Associate Vice President for Human Resources for Marywood University, hereby declare, under penalty of perjury, that I signed the foregoing Defendant's Answers to Plaintiff's First Set of Interrogatories for and on behalf of Defendant, and that I am duly authorized to do so; that all of the matters stated above are not within my personal knowledge and that I have been informed that there is no single officer or employee of Defendant who has personal knowledge of all such matters; that the facts stated above have been assembled by counsel for Defendant, and that to the best of my knowledge, the facts stated in the foregoing Answers are true and represent the best information available at the time that the Answers were prepared.

  
Patricia Dunleavy

Dated: \_\_\_\_\_

8/2/2016

**CERTIFICATE OF SERVICE**

I, Asima J. Ahmad, hereby certify that I caused to be served, a true and correct copy of *Defendant's Answers and Objections to Plaintiff's First Set of Interrogatories and Defendant's Response to Plaintiff's Second Request for Production of Documents and Electronically Stored Information* via electronic mail and/or U.S. First Class Mail, postage prepaid, upon the following counsel of record:

Jonathan Z. Cohen, Esquire  
175 Strafford Avenue, Suite 1 #212  
Wayne, PA 19087  
[jzc@jzc-law.com](mailto:jzc@jzc-law.com)

**JACKSON LEWIS P.C.**

  
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*ATTORNEYS FOR DEFENDANT*

DATED: August 5, 2016

# Exhibit 18

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**EXHIBIT**  
**18**

- - -

FREDERICK F. FAGAL, JR.	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 3:14-cv-02404-ARC
	:	
vs.	:	(JUDGE CAPUTO)
	:	
MARYWOOD UNIVERSITY,	:	
	:	
Defendant.	:	

- - -  
September 6, 2016  
- - -

Oral deposition of Alan M. Levine, taken pursuant to notice, was held at the Radisson Lackawanna Station Hotel, Suite 206, 700 Lackawanna Avenue, Scranton, Pennsylvania, commencing at 9:30 a.m., on the above date, before Judy A. Black, a Registered Professional Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania.

- - -

MAGNA LEGAL SERVICES  
Seven Penn Center, 8th Floor  
1635 Market Street  
Philadelphia, Pennsylvania 19103  
(866) 624-6221

Page 2

## A P P E A R A N C E S:

JONATHAN Z. COHEN, LTD  
 BY: JONATHAN Z. COHEN, ESQUIRE  
 175 Strafford Avenue  
 Suite 1 PMB 212  
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 Attorneys for Plaintiff

JACKSON LEWIS, P.C.  
 BY: STEPHANIE J. PEET, ESQUIRE  
 Three Parkway  
 1601 Cherry Street, Suite 1350  
 Philadelphia, PA 19102  
 (267) 319-7802  
 Attorneys for the Defendant

## ALSO PRESENT:

FREDERICK F. FAGAL, JR.

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Levine-6 E-mail chain dated Tuesday, 27  
 January 17, 2012, Bates Nos.  
 DEF002743-2746  
 Levine-7 E-mail chain dated Tuesday, 28  
 January 17, 2012, Bates Nos.  
 DEF002734-2735  
 Levine-8 E-mail chain dated Sunday, 30  
 January 22, 2012, Bates Nos.  
 DEF002759-2760  
 Levine-9 Letter dated January 24, 2012, 44  
 with attachments, Bates Nos.  
 DEF000166-187  
 Levine-10 Document headed "Talking Points 46  
 for Board," Bates Nos.  
 DEF000145-146  
 Levine-11 Document headed "Talking Points 48  
 for Meeting," Bates No.  
 DEF000147  
 Levine-12 E-mail dated Monday, 48  
 January 30, 2012, Bates No.  
 DEF002756  
 Levine-13 E-mail dated Monday, April 2, 49  
 2012, Bates No. DEF002380

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Page 3

## I N D E X

Testimony of: Alan M. Levine

## D I R E C T C R O S S R E D I R E C T R E C R O S S

By Mr. Cohen 6  
 By Ms. Peet 53

## E X H I B I T S

NUMBER	DESCRIPTION	PAGE
Levine-1	5-page document headed "Marywood University Progressive Discipline"	10
Levine-2	E-mail dated Wednesday, November 9, 2011, Bates No. DEF002392	11
Levine-3	E-mail chain dated Monday, November 28, 2011, Bates Nos. DEF002703-2705	14
Levine-4	E-mail chain dated Wednesday, November 30, 2011, Bates Nos. DEF002713-2714	20
Levine-5	E-mail chain dated Thursday, December 1, 2011, Bates No. DEF002416	24

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## D E P O S I T I O N S U P P O R T I N D E X

Direction to Witness Not to Answer  
 Page Line Page Line Page Line  
 None

Request for Production of Documents  
 Page Line Page Line Page Line  
 None

Stipulations  
 Page Line Page Line Page Line  
 6 1

Question Marked  
 Page Line Page Line Page Line  
 None

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Page 6

1           - - -  
2           STIPULATIONS  
3           - - -

4           IT IS STIPULATED by and between counsel  
5 that the Deposition of Alan M. Levine, is being  
6 taken pursuant to agreement and that all  
7 objections, except as to form, are reserved  
8 until the time of trial. Alan M. Levine does  
9 not waive the reading, signing, and filing of  
10 the Deposition.

11           - - -  
12           A L A N M. L E V I N E, having  
13 been duly sworn, was examined and testified as  
14 follows:  
15           - - -

16 DIRECT EXAMINATION BY MR. COHEN:

17       Q.   Good morning, Dr. Levine.

18       A.   Good morning.

19       Q.   My name is Jonathan Cohen. I represent  
20 the plaintiff in this litigation, Frederick F. Fagal,  
21 Jr. Do you understand that you're under oath today,  
22 the same as if you were in a courtroom?

23       A.   I do.

24       Q.   And have you ever had your deposition  
            MAGNA LEGAL SERVICES

Page 7

1 taken?

2       A.   Nope.

3       Q.   Okay. So the way this works is I just  
4 ask you questions, and unless your attorney instructs  
5 you not to answer, you're supposed to answer them.  
6 If you don't understand the question, please just say  
7 so and I'll rephrase it. If you need to take a  
8 break, that's fine, too.

9       As I'm asking a question, you might  
10 think that you know what I'm about to ask and you  
11 might start answering it, but that's hard for the  
12 court reporter to take everything down, so if you can  
13 just wait until I finish the question, it's easier  
14 for everybody.

15       Is there anything that would prevent you  
16 from thinking clearly or testifying truthfully today?

17       A.   Nope.

18       Q.   What is your full name including any  
19 middle name?

20       A.   Alan Michael Levine.

21       Q.   And could you tell me a little bit about  
22 your educational background, Dr. Levine?

23       A.   I could.

24       Q.   Could you?

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1       A.   I could.

2       Q.   Could you explain -- did you go to  
3 college, did you go to grad school?

4       A.   Yes.

5       Q.   Tell me where you went.

6       A.   I went to college at Hofstra University.

7       Q.   Okay. Did you attend graduate school?

8       A.   I did.

9       Q.   And where did you go to graduate school?

10       A.   New York University.

11       Q.   And what were your degrees in?

12       A.   Where?

13       Q.   Both places.

14       A.   Psychology undergrad, nutrition and  
15 dietetics master's, nutrition and dietetics Ph.D.

16       Q.   Okay. When did you first begin working  
17 for Marywood University?

18       A.   1978.

19       Q.   And what did you do before then  
20 professionally?

21       A.   Lots of things.

22       Q.   Okay. And, today, are you still  
23 employed by Marywood University?

24       A.   Yes.

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1       Q.   And what's your position there?

2       A.   Professor.

3       Q.   And it's true that at one point you were  
4 vice president, correct, of academic affairs?

5       A.   Correct.

6       Q.   When did you first meet my client,  
7 Professor Fagal?

8       A.   I don't remember.

9       Q.   Would it be fair to say that Professor  
10 Fagal has had a number of run-ins with Marywood's  
11 administration?

12       MS. PEET: Objection to the form. You  
13 can answer.

14       THE WITNESS: Yes, I can answer?

15       MS. PEET: You can answer.

16       A.   Would you repeat the question?

17       Q.   Would it be fair to say that Professor  
18 Fagal has had a number of run-ins with Marywood's  
19 administration?

20       MS. PEET: Objection. You can answer.

21       A.   I don't know what run-ins means.

22       Q.   Confrontations?

23       A.   You'd have to define that term for me.

24       Q.   You don't understand what a

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1 confrontation is?

2 A. There's all levels of confrontation.

3 Q. Okay. We'll move on. We're going to  
4 mark this as exhibit Levine-1, please.

5 (Levine-1, 5-page document headed  
6 "Marywood University Progressive Discipline Policy  
7 Statement," is received and marked for  
8 identification.)

9 Q. Now, Dr. Levine, are you familiar with  
10 that document? And you can briefly review it,  
11 please.

12 A. Yes.

13 Q. Okay. And what is it?

14 A. Marywood University progressive  
15 discipline policy statement.

16 Q. And could you turn to the last page? Do  
17 you see the section where it says "History"?

18 A. Yes.

19 Q. And this section covers, you know, when  
20 various versions of this policy became effective,  
21 correct?

22 MS. PEET: Objection, lack of  
23 foundation. You can answer.

24 A. I believe that to be true.

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1 Q. And do you know if this is a policy that  
2 was in effect when Professor Fagal departed Marywood  
3 University?

4 A. I don't know.

5 Q. Did you have any role in helping to  
6 formulate the policy that we're looking at?

7 I'm sorry, did you say something?

8 A. I'm looking. I didn't say anything yet.

9 I don't believe the policy -- no, I  
10 don't believe so.

11 Q. Did you serve on the policy committee at  
12 Marywood?

13 A. Yes.

14 Q. Okay. Have you ever read this policy in  
15 full?

16 A. Yes.

17 Q. Let's move on.

18 I'm going to have this marked as Levine  
19 Exhibit 2?

20 (Levine-2, E-mail dated Wednesday,  
21 November 9, 2011, Bates No. DEF002392, is received  
22 and marked for identification.)

23 Q. And could you, Dr. Levine, read this to  
24 yourself, let me know when you're finished?

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1 A. I'm finished.

2 Q. Do you recognize this document,  
3 Dr. Levine?

4 A. Yes.

5 Q. And what is this?

6 A. An e-mail document.

7 Q. That's correct. Is it an e-mail from  
8 you to -- from Dr. Foley to you dated November 8,  
9 2011, at 8:25 p.m.?

10 A. No.

11 MS. PEET: November 9th.

12 Q. November 9, 2011?

13 A. Yes.

14 Q. Who is Dr. Michael Alan Foley?

15 A. Who is he?

16 Q. Yes.

17 A. He's a man. I don't understand your  
18 question.

19 Q. Did he have a position at Marywood  
20 University?

21 A. Yes.

22 Q. What was his position?

23 A. When?

24 Q. At the time this e-mail was written.

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1 A. Dean, College of Liberal Arts and  
2 sciences.

3 Q. Did you ever respond to this e-mail? I  
4 know this was a long time ago.

5 A. I don't remember.

6 Q. Okay. At the time this e-mail was  
7 written, was it, in fact, becoming more and more  
8 difficult to staff Professor Fagal's courses?

9 A. The e-mail says it was.

10 Q. I'm aware of that. I'm asking you if,  
11 in fact, that was true.

12 A. As I read the e-mail, it appears to be  
13 true.

14 Q. Okay. Why was it becoming more  
15 difficult to staff Professor Fagal's courses?

16 MS. PEET: Objection, lack of  
17 foundation. You can answer, if you know.

18 A. I'm not sure.

19 Q. Was this e-mail the first time that this  
20 issue came to your attention, difficulty in staffing  
21 Professor Fagal's courses?

22 A. I don't remember.

23 Q. Do you remember if you or Dr. Foley came  
24 to a solution to the problem of the difficulty in

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1 staffing Professor Fagal's courses?

2 MS. PEET: Objection to the form. You  
3 can answer.

4 A. I don't believe so.

5 Q. Okay. If fewer and fewer students were  
6 taking Professor Fagal's classes, would it be fair to  
7 say Professor Fagal was becoming a more expensive  
8 employee to keep around?

9 MS. PEET: Objection to the form, lack  
10 of foundation. Calls for speculation.

11 You can answer, if you know.

12 A. Would you repeat the question?

13 Q. If it was becoming harder and harder to  
14 enroll students in Professor Fagal's classes, would  
15 it be fair to say that it became more and more  
16 expensive to keep Professor Fagal around?

17 MS. PEET: Objection.

18 A. Same salary. There's no change in the  
19 expense.

20 I'm going to get some water.

21 MS. PEET: Sure.

22 MR. COHEN: Okay. We're going to make  
23 this Levine Exhibit 3.

24 (Levine-3, E-mail chain dated Monday,  
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1 November 28, 2011, Bates Nos. DEF002703-2705, is  
2 received and marked for identification.)

3 BY MR. COHEN:

4 Q. And can you review this entire e-mail  
5 chain and let me know when you're finished, please?

6 A. Finished.

7 Q. Do you recognize this document,  
8 Dr. Levine?

9 A. Yes.

10 Q. Okay. It begins with an e-mail from  
11 Professor Fagal on November 23rd, 2011, correct, to  
12 Mr. Oliveri?

13 A. Correct.

14 Q. And then Sister Margaret Gannon forwards  
15 you that e-mail, correct, on November -- on the same  
16 day?

17 A. Correct.

18 Q. And at the time, what position did  
19 Sister Margaret Gannon have with Marywood?

20 A. I believe she was chair.

21 Q. Of Professor Fagal's department?

22 A. Of the social science department.

23 Q. Okay.

24 A. I believe. I believe that.

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1 Q. And so she forwards you Professor  
2 Fagal's e-mail, and then on November 24, 2011, you  
3 respond, correct?

4 A. Yes.

5 Q. And you say, "Thanks for the heads-up."  
6 That's your first line, correct?

7 A. Correct.

8 Q. Why did you thank her for the heads-up?

9 A. I was being polite.

10 Q. Well, what is it about the situation  
11 that even needed your input?

12 A. I'm not sure anything needed my input.

13 Q. Do you have any idea why Sister Gannon  
14 forwarded this to you?

15 MS. PEET: Objection to the form. Calls  
16 for speculation. You can answer, if you know.

17 A. I was vice president academic affairs.  
18 It was an academic issue.

19 Q. Anytime a professor wanted to bring a  
20 speaker to class, it became an issue for you?

21 MS. PEET: Objection to the form. You  
22 can answer.

23 A. No.

24 Q. Okay. What is it about this particular  
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1 class -- what is it about this particular attempt to  
2 call an outside speaker to class that it rose to your  
3 level and it became an issue?

4 MS. PEET: Objection to the form. You  
5 can answer.

6 A. Movement to a venue that was not normal  
7 class -- not the normal place for the class and  
8 inviting the entire community to class, that's very  
9 unusual.

10 Q. Is it problematic?

11 A. Problematic? Not if a venue is  
12 available and the class is run the way classes are  
13 normally run.

14 Q. And your second sentence reads, "I'm in  
15 Michigan, so I'm less able to check out some things  
16 which I believe to be germane to the situation,"  
17 correct?

18 A. Yes.

19 Q. What things did you think were germane  
20 to the situation?

21 A. Movement to a different venue, whether  
22 or not that class is being scheduled at a time the  
23 class is normally scheduled or whether students were  
24 being asked to attend the class at a time other than

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1 our regularly scheduled class.

2 Q. Why did you -- further down in your  
3 e-mail, you mentioned that you'd be interested in  
4 knowing whether anyone in social sciences had ever  
5 opened their class to the entire campus, correct?

6 A. Yes, that's what the e-mail says, yes.

7 Q. Why did you care whether anyone in  
8 social sciences had ever opened their class to the  
9 entire campus?

10 A. Seemed unusual to have a change in venue  
11 and invite the entire campus. That is generally not  
12 done at Marywood. I don't know it's ever been done,  
13 although I don't know that for sure. Seemed odd.

14 Q. The fact that it was odd to you, did  
15 that make it a problem?

16 A. It makes it something, as VPAA, I should  
17 investigate.

18 Q. After your e-mail, Sister Gannon replied  
19 to you, correct, on November 26th?

20 A. Yes.

21 Q. And then you forwarded Sister Gannon's  
22 e-mail to Sister Anne Munley, correct?

23 A. I don't know. Obviously I wrote an  
24 e-mail to Sister Anne Munley, but whether I forwarded  
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1 this, I'm not sure.

2 Q. Okay.

3 A. Did I?

4 Q. Now, to Sister Munley, you were --  
5 you're mentioning that there will be posters  
6 advertising the event, and -- correct?

7 A. Let's see.

8 MS. PEET: Is the question does the  
9 e-mail say there will be posters advertising the  
10 event?

11 MR. COHEN: Yes.

12 A. Yes.

13 Q. And the last sentence in your e-mail  
14 says, "It seems to me that Fred and Tom are simply  
15 trying to circumvent our guidelines concerning  
16 outside speakers who have a political agenda,"  
17 correct?

18 A. That's what it says, yes.

19 Q. So the real issue to you was not so much  
20 that the entire campus was invited or that it was in  
21 a different room, it was that you thought the speaker  
22 had a political agenda, correct?

23 MS. PEET: Object to the form.  
24 Mischaracterization of testimony. You can answer.  
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1 A. The real issue to me was what I told  
2 you. Additionally, Marywood has a policy wherein if  
3 a speaker comes representing one side of an issue,  
4 the university invites at the same time a speaker  
5 representing the other side.

6 Q. Is that a written policy, or was it a  
7 written policy?

8 A. I don't know.

9 Q. What was the political agenda that you  
10 thought that the speaker that Professor Fagal had  
11 proposed to bring had?

12 A. I don't remember. I don't remember back  
13 at the time.

14 Q. It's okay.

15 Do you remember if Sister Munley  
16 responded to your e-mail?

17 A. I don't remember.

18 Q. Okay.

19 MR. COHEN: Let's make this exhibit  
20 Levine-4, please.

21 (Levine-4, E-mail chain dated Wednesday,  
22 November 30, 2011, Bates Nos. DEF002713-2714 is  
23 received and marked for identification.)

24 Q. And could you read this to yourself, as  
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1 well, and let me know when you're finished?

2 A. I'm finished.

3 Q. Raymond P. Heath, he was vice president  
4 for student life at the time?

5 A. Yes.

6 Q. And in Dr. Heath's e-mail to you, the  
7 most recent one in the exchange on November 30, 2011,  
8 his first sentence is, "Without all of the details  
9 now, Fred Fagal's poor behavior has continued."  
10 Correct?

11 A. That's what the e-mail says.

12 Q. Do you know what Dr. Heath meant by  
13 "Fred Fagal's poor behavior"?

14 MS. PEET: Objection to the form, calls  
15 for speculation. You can answer if you know.

16 A. No, I don't know.

17 Q. Later on in the e-mail, Dr. Heath  
18 states, "After enabling him for so long, isn't a  
19 similar session overdue? If you agree, could a  
20 conversation with him, the dean, you, me, and anyone  
21 else you suggest be scheduled soon?" Did I read that  
22 correctly?

23 A. Yes.

24 Q. Did you agree that Professor Fagal was  
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1 being enabled?

2 A. I don't remember if I agreed with him.

3 Q. Did you agree with Dr. Heath that a  
4 conversation with Professor Fagal was in order  
5 regarding his behavior?

6 A. I don't remember for sure.

7 Q. Do you know whether this was ever done,  
8 whether someone had a talk with Professor Fagal about  
9 his behavior?

10 A. Define "someone."

11 Q. Any administrators at Marywood  
12 University, including you?

13 MS. PEET: I'm sorry. Could you repeat  
14 the question?

15 BY MR. COHEN:

16 Q. At some point, did you, did any other  
17 administrators have a conversation with Professor  
18 Fagal regarding the poor behavior referenced in this  
19 e-mail?

20 MS. PEET: Objection to the form. You  
21 can answer.

22 A. Yeah, I can't speak for what other  
23 administrators did. I'm not privy to that.

24 Q. How about you?

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1 A. I don't remember if I had a conversation  
2 concerning this e-mail, but I have had conversations  
3 with Fagal.

4 Q. About behavior?

5 A. I don't remember.

6 Q. Okay. Do you remember if you ever  
7 responded to Dr. Heath's e-mail here?

8 A. I believe I did.

9 Q. Do you remember what you said?

10 A. No.

11 Q. Okay.

12 MR. COHEN: Stephanie, if indeed  
13 Dr. Levine replied to this e-mail, I don't think we  
14 saw it in production. Maybe it doesn't exist.

15 MS. PEET: To the extent it exists, it's  
16 been produced. I can confirm that for sure. And you  
17 can trust me, it's been.

18 MR. COHEN: I understand it's been a  
19 large document production.

20 MS. PEET: Yes, we're not holding  
21 anything back. So to the extent there was a  
22 response, it's been produced.

23 MR. COHEN: Let's have this marked as  
24 exhibit Levine-5.

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1 (Levine-5, E-mail chain dated Thursday,  
2 December 1, 2011, Bates No. DEF002416, is received  
3 and marked for identification.)

4 Q. And could you read this exchange to  
5 yourself and let me know when you're finished?

6 A. Finished.

7 Q. The latest e-mail in the chain is again  
8 from Dr. Heath to you on December 1st, 2011, correct?

9 A. Correct.

10 Q. He references Peter's staff here. Do  
11 you know who he's referring to, which Peter?

12 A. Yes.

13 Q. Who is that?

14 A. Who is Peter?

15 Q. Yes.

16 A. Peter Kilcullen.

17 Q. In this e-mail, Dr. Heath is telling you  
18 that Professor Fagal is attempting to intimidate, if  
19 not bully, Carl Oliveri and Peter's staff. Would you  
20 agree with that?

21 A. I agree that the e-mail says, "I do  
22 think a conversation with Fred Fagal to discuss his  
23 attempts to intimidate, if not bully, Carl Oliveri  
24 and Peter's staff is overdue." That's what it says.

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1 Q. I understand that. Do you agree that,  
2 in fact, Professor Fagal was attempting to intimidate  
3 or bully Carl Oliveri?

4 MS. PEET: Objection to the form.

5 A. I don't know.

6 Q. Did you investigate this?

7 A. No.

8 Q. Did you agree with Raymond Heath that a  
9 conversation with Professor Fagal was necessary to  
10 address the alleged bullying and intimidation?

11 MS. PEET: Objection to the form. You  
12 could answer.

13 A. Probably. Probably it was necessary.

14 Q. Okay. Did you ever have a conversation  
15 with Professor Fagal about this?

16 A. No.

17 Q. Why was it necessary?

18 A. It was a student-life issue that Ray  
19 Heath felt that a conversation was necessary. As a  
20 fellow vice president, I didn't disagree.

21 Q. I'm sorry, what was the last thing you  
22 said?

23 A. I said, as a fellow vice president. I  
24 was a fellow vice president. I didn't disagree that

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1 a conversation wasn't necessary.

2 Q. In the same e-mail, Dr. Heath references  
3 Professor Fagal's other agenda. Do you see that?

4 A. Yes.

5 Q. Do you know what agenda he was referring  
6 to?

7 A. No.

8 Q. Did you agree that Professor Fagal's  
9 behavior was affecting individual's outside of his  
10 department?

11 A. Yes.

12 Q. How was he affecting them?

13 A. He was causing difficulty for some  
14 students.

15 Q. What type of difficulty?

16 A. Emotional difficulty.

17 Q. How was he causing emotional difficulty?

18 A. By putting a cartoon demeaning Muslims  
19 on his door, he was causing difficulty for Muslim  
20 students who didn't agree with him. Emotional  
21 difficulty, or emotional pain.

22 Q. Is that the only way that you know of  
23 that he was affecting these students?

24 A. As far as I remember now.

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1 Q. And do you remember responding to this  
2 e-mail?

3 A. I don't remember, but I'm sure you have  
4 a response if there is one.

5 MR. COHEN: Let's have this marked as  
6 Levine Exhibit 6, please.

7 (Levine-6, E-mail chain dated Tuesday,  
8 January 17, 2012, Bates Nos. DEF002743-2746, is  
9 received and marked for identification.)

10 Q. And could you read this to yourself and  
11 let me know when you're finished, please?

12 A. Finished.

13 Q. Okay. These e-mails reference Mary  
14 Theresa. That's Marywood's inside attorney, correct?

15 A. Correct.

16 Q. Now, I don't want to know what you asked  
17 her, but --

18 MS. PEET: That would also go to what  
19 she said to you, to the extent she said anything.

20 Q. Yes, I'm not trying to ask you anything  
21 that's privileged. But what I am interested in is  
22 you're saying to Pat Dunleavy, you're trying to find  
23 out what your -- what our options are. What type of  
24 options did you have in mind?

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1 A. Whether I can sue this bastard for the  
2 egregious, what he called, Hitler parody. That was  
3 the main thing I was interested in personally.

4 Q. What about options not for you  
5 personally but for the university?

6 A. Whether the university had to allow that  
7 parody, what this bastard called a parody, to be out  
8 on YouTube.

9 Q. Were you specifically interested in  
10 possible discipline for Professor Fagal?

11 A. Specifically what do you mean?

12 Q. Written warning, oral warning,  
13 suspension, termination. You know what discipline  
14 means, right?

15 A. All of those things should have been on  
16 the table.

17 Q. Okay.

18 MR. COHEN: Let's mark this as Levine  
19 Exhibit 7.

20 (Levine-7, E-mail chain dated Tuesday,  
21 January 17, 2012, Bates Nos. DEF002734-2735, is  
22 received and marked for identification.)

23 Q. And, again, Dr. Levine, could you read  
24 this to yourself and let me know when you're

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1 finished?

2 A. Finished.

3 Q. Okay. Again, here you're asking Pat for  
4 possible responses for you and Marywood, correct?

5 A. Correct.

6 Q. And Dr. Dunleavy responds that  
7 internally you can file a formal complaint under the  
8 civil rights policy, correct?

9 A. Correct.

10 Q. Did you ever do that?

11 A. No.

12 Q. Why not?

13 A. I'm not sure. It is a mistake. I  
14 should have sued the bastard for defamation of  
15 character. I'm told I can't do that now, but I  
16 should have gotten that bastard for that.

17 Q. Well, I'm not referring to any possible  
18 suit. I'm specifically referring to the civil rights  
19 policy. You said you didn't file one and you regret  
20 it?

21 A. I don't regret not filing a civil  
22 rights. I regret not suing this bastard for  
23 defamation of character. That's what I said.

24 Q. And why didn't you file a complaint

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1 under the civil rights policy?

2 A. I don't remember why.

3 MR. COHEN: Let's make this Levine  
4 Exhibit 8, please.

5 (Levine-8, E-mail chain dated Sunday,  
6 January 22, 2012, Bates Nos. DEF002759-2760, is  
7 received and marked for identification.)

8 Q. And could you read this to yourself, as  
9 well, and let me know when you're finished?

10 A. Finished.

11 Q. Do you recognize this exchange of  
12 e-mails, Dr. Levine?

13 A. Yes.

14 Q. Now, the first e-mail in the exchange is  
15 from you to Patricia Dunleavy and I'm guessing Mike  
16 Foley, correct?

17 A. Correct.

18 Q. And here you're kind of -- you're  
19 discussing plans for bringing Professor Fagal in to  
20 meet with President Munley, correct?

21 A. Correct.

22 Q. And the first line in this e-mail says,  
23 "I just finished chatting with Sister Anne," right?

24 A. Correct.

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1 Q. So that's, in fact, true. You did chat  
2 with her?

3 A. Obviously.

4 Q. For how long?

5 A. For how long did we have a chat?

6 Q. Yes.

7 A. I don't know.

8 Q. Do you remember the substance of your  
9 conversation?

10 A. Yes.

11 Q. Could you convey it to me in as much  
12 detail as possible?

13 A. Yes.

14 Q. Please do so.

15 A. Sister Anne was interested in having  
16 Fagal brought into the office to discuss disciplinary  
17 action concerning the video. She wanted my input, as  
18 was appropriate being that I was vice president of  
19 academic affairs at the time, and we discussed the  
20 strategy to have Fagal come in and be interviewed.

21 Q. What was your input?

22 A. My input was that was appropriate to  
23 have him come in to be interviewed. I was not there  
24 because of the angst and anxiety that I felt as a

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1 result of this bastard's Nazi video, portraying me as  
2 a Nazi, as well as involving my family members.  
3 Sister Anne, out of the kindness of her heart,  
4 decided it would be appropriate not to have me there  
5 to spare me that. Shalom. Mother fucker.

6 Q. Dr. Levine, I understand you're upset.  
7 Is it really necessary to continue calling him  
8 bastard throughout the entire deposition, calling me  
9 a mother fucker? Or are you calling him a mother  
10 fucker?

11 A. I don't understand how you can defend  
12 this bastard.

13 Q. Well, I am, and you're here, and do we  
14 have to continue with, you know, berating him?

15 A. It's my option, isn't it?

16 MS. PEET: He's very emotional about  
17 this.

18 MR. COHEN: I know.

19 MS. PEET: As well as if I were in a  
20 video, you were in a video. We can't control how  
21 people are going to feel. And this brings up all  
22 sorts of emotion again.

23 If you can refrain from using the  
24 language. We all understand how you feel, by all

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1 means, but if -- I get that you're emotional.

2 BY MR. COHEN:

3 Q. So my question is: Do you think you  
4 could refrain from continuing to call my client  
5 bastard, calling me and/or my client mother fucker,  
6 throughout the rest of the deposition?

7 A. I'm not sure.

8 Q. Do we really need to get the judge  
9 involved?

10 A. I don't know.

11 Q. Okay. So do you want to take a break?

12 A. I'm good.

13 Q. You're good? All right.

14 So we just finished talking about  
15 various plans for bringing in Dr. Fagal. You talked  
16 about how you had a conversation with President  
17 Munley about it before sending this e-mail. Did you  
18 communicate about your plans to bring Professor Fagal  
19 in to meet with President Munley with anyone other  
20 than President Munley, Patricia Dunleavy, or  
21 Dr. Foley?

22 A. I don't believe so.

23 Q. Okay. Ultimately do you remember, in  
24 fact -- I know you weren't there, but are you aware

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1 that on January 23rd, 2012, Professor Fagal was  
2 brought in to meet with President Munley, Dr. Foley  
3 and Patricia Dunleavy?

4 A. Yes, I'm aware of it.

5 Q. Okay. Are you aware at that meeting  
6 Professor Fagal was suspended?

7 A. Yes.

8 Q. Prior to that meeting on January 23rd,  
9 2012, do you know whether President Munley had a --  
10 was planning to suspend Professor Fagal?

11 MS. PEET: Objection to the form. Calls  
12 for speculation. You can answer.

13 A. I don't know.

14 Q. Did she tell you that?

15 A. Could you repeat the question?

16 Q. Sure. Prior to the January 23rd, 2012  
17 meeting with Professor Fagal, President Munley,  
18 Dr. Foley and Patricia Dunleavy, did President Munley  
19 tell you that she intended to suspend Professor  
20 Fagal?

21 A. She told me that that was one of the  
22 options.

23 Q. Did anyone else in Marywood's  
24 administration tell you that that was an option,

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1 suspending Professor Fagal?

2 A. I don't remember.

3 Q. Again, prior to this meeting, had you  
4 recommended that Professor Fagal be suspended?

5 A. In my conversation with President  
6 Munley, that came up.

7 Q. Do you remember any more detail other  
8 than suspending him came up?

9 A. I was certainly on board with it knowing  
10 what I knew, but I knew there was more that would  
11 come out of the interview.

12 Q. So you were on board with it, the  
13 suspension, prior to the meeting?

14 A. From what -- yes.

15 Q. Now, prior to the January 23rd, 2012  
16 meeting, were you also aware of a plan to seek the  
17 termination of Professor Fagal?

18 MS. PEET: Objection,  
19 mischaracterization of testimony. It implies that  
20 there was such a plan. You can answer.

21 A. That was certainly a possibility.

22 Q. In your mind or did you discuss it with  
23 someone?

24 A. Both, in my mind and in discussions with  
MAGNA LEGAL SERVICES

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1 President Munley.

2 Q. Okay. What exactly did you or President  
3 Munley say about possible termination of Professor  
4 Fagal?

5 A. I can't answer exactly from your  
6 question.

7 Q. In as much detail as possible?

8 A. We talked about the possibility of Fagal  
9 being suspended and/or terminated. I was certainly  
10 on board with either/or both. I thought what he did  
11 was so egregious that that was a legitimate outcome  
12 pending the conversation with the meeting on Monday.

13 Q. Do you recall anybody else in Marywood's  
14 administration or cabinet other than yourself and  
15 President Munley recommending that Professor Fagal be  
16 terminated? This is prior to the January 23rd  
17 meeting.

18 A. I don't remember for sure.

19 Q. We're going to come back to this e-mail  
20 from you to Dr. Dunleavy and Dr. Foley, the first  
21 e-mail in this chain, and in the second paragraph,  
22 first sentence, you wrote, "Mike, at about 8:45 you  
23 will go down to Fred's office to let him know that  
24 Sister Anne would like to meet with him at 9:00 in  
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1 her office." Did I read that correctly?

2 A. Correct.

3 Q. What was the reason for providing  
4 Professor Fagal only 15 minutes' notice of the  
5 meeting with President Munley?

6 MS. PEET: Objection to the form. You  
7 can answer.

8 A. I don't know. I don't remember.

9 Q. Now, you said earlier that President  
10 Munley spared you from the meeting, correct?

11 A. Correct.

12 Q. Did you want to attend?

13 A. Yes and no.

14 Q. Ultimately why did you decide not to  
15 attend the meeting?

16 MS. PEET: Objection to the form. You  
17 can answer.

18 A. She asked me not to. I also thought  
19 with the wound much fresher than it is right now --  
20 do you think my responses at this time are  
21 problematic? I lost people in the fucking Holocaust.

22 Q. We'll move on to the next e-mail in the  
23 chain. This is just Dunleavy saying, "Sounds good,"  
24 and then the next e-mail from you to Patricia  
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1 Dunleavy, January 21st, 2012, at 10:33 p.m. Do you  
2 see that?

3 A. Yes, I do.

4 Q. And here you tell Dr. Dunleavy that  
5 Professor Fagal attempted to call you at home. You  
6 didn't pick up. He left a message, correct?

7 A. That's what the e-mail says, yes.

8 Q. And then Patricia Dunleavy says, "That's  
9 interesting. Save the message or at least keep a  
10 record," correct?

11 A. Yes, that's what the e-mail says, yes.

12 Q. Did you save the message?

13 A. I may have saved it but I don't anymore  
14 have it. Phones go the way they go.

15 Q. As phones --

16 A. As phones go the way they go, new  
17 machines, and it's gone.

18 Q. So this was a -- was it like a digital  
19 voicemail or an answering machine?

20 A. Answering machine.

21 Q. So was it stored on a tape or was it  
22 stored digitally?

23 A. You know, I don't remember what I had at  
24 the time. It's not my current phone.

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1 Q. Do you remember the substance of the  
2 message that Professor Fagal left?

3 A. I remember the substance because I'm  
4 reading the e-mail, and it reminds me that the  
5 substance was that your client wanted to talk off the  
6 record.

7 Q. You didn't call him back, correct?

8 A. Correct.

9 Q. Other than actually having the message  
10 itself, did you record the content in some way.  
11 Like, did you write down what he said anywhere, other  
12 than this e-mail?

13 A. I don't believe so.

14 Q. Now, coming back to the January 23rd,  
15 2012 meeting, you said before the meeting you had  
16 discussed possible discipline for Professor Fagal  
17 with President Munley, correct?

18 A. Correct.

19 Q. The issue of a suspension came up in  
20 that conversation, correct?

21 A. Yes.

22 Q. You said that you supported it, correct?

23 A. Yes, but I supported also termination.

24 Q. Prior to the January 23rd, 2012 meeting,

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1 did you make a written recommendation that Professor  
2 Fagal be suspended?

3 A. I don't remember, but as I said before,  
4 if I did, I'm sure you have it.

5 Q. Did you make a written recommendation of  
6 any other type of discipline other than suspension  
7 prior to the January 23rd, 2012 meeting?

8 A. I don't remember, but, again, if I did,  
9 I'm sure you have it.

10 Q. So your role, if any, in the decision to  
11 suspend Professor Fagal, would it be fair to say  
12 would be limited to your conversation with President  
13 Munley before the January 23rd, 2012 meeting?

14 A. No.

15 MS. PEET: Objection to the form. Go  
16 ahead.

17 A. No, it would not be fair to say that.

18 Q. Why not?

19 A. We had a conversation before the  
20 meeting. We had a conversation after the meeting,  
21 and so that my role was both before -- pre and post  
22 meeting.

23 Q. You had a conversation with President  
24 Munley after the January 23rd, 2012 meeting?

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1 A. Yes.

2 Q. Okay. Provide to me the detail of that  
3 conversation to the best of your ability.

4 A. As I remember it, we talked about what  
5 transpired at the meeting and we talked about  
6 suspension and/or termination. I was on board with  
7 termination after the meeting. I was good with  
8 termination. I thought he should have been  
9 terminated. I agreed with her, with that  
10 recommendation or that idea.

11 Q. How soon after the January 23rd, 2012  
12 meeting did you have this conversation?

13 A. I can only speculate in answer to that.

14 Q. All right.

15 THE WITNESS: I'm getting more water.  
16 Feel free to continue.

17 MS. PEET: Do you need a break?

18 THE WITNESS: No, I'm good.

19 BY MR. COHEN:

20 Q. So we established that President Munley  
21 suspended Professor Fagal. You were on board with  
22 it, correct?

23 A. Suspended, terminated, as well, I think.

24 Q. We'll get to the termination.

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1 A. Yes, I was on board.

2 Q. Did you object to President Munley that  
3 it was your job to suspend Professor Fagal?

4 MS. PEET: Objection to form. You can  
5 answer.

6 A. I don't remember objecting.

7 Q. Did you tell President Munley that it  
8 was your job to suspend Professor Fagal?

9 MS. PEET: Objection to the form.  
10 Assumes facts not in evidence. You can answer.

11 A. I believe we discussed it.

12 Q. Okay. Can you elaborate on your  
13 discussion?

14 A. We agreed that the situation was so  
15 egregious that she as -- that she as president  
16 certainly had the ability to do that with my input,  
17 as I gave it.

18 Q. But on more routine, less egregious  
19 cases, would you agree that it was your job and your  
20 job alone to suspend employees?

21 MS. PEET: Objection to the form. You  
22 can answer.

23 A. Under normal -- yes, yes. Answer it  
24 that way.

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1 Q. Prior to Professor Fagal's suspension on  
2 January 23rd, 2012, did you believe that Professor  
3 Fagal posed an immediate harm to himself or to  
4 others?

5 A. Yes.

6 Q. Okay. What type of harm?

7 A. Emotional harm. He harmed me and  
8 probably others.

9 Q. Do you remember exactly when Professor  
10 Fagal sent his e-mail, you know, with the links to  
11 the videos? I think it was among the exhibits.

12 A. Yeah.

13 MS. PEET: Do you just want to point him  
14 to it?

15 A. January 13, 2012, it appears.

16 Q. And when did you learn of it?

17 A. I believe I learned of it when Margaret  
18 Gannon sent me an e-mail with the link. That may  
19 well be here.

20 Q. January 16, 2012?

21 A. Yes, correct.

22 Q. So if you saw Professor Fagal's videos  
23 on January 16, 2012, and you thought that he posed an  
24 immediate harm, why didn't you just suspend him right

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1 then and there?

2 MS. PEET: Objection to the form. You  
3 can answer.

4 A. I was in a car driving back from  
5 Michigan. My wife was driving. I was shocked. She  
6 was shocked.

7 Q. Okay. As soon as you finished your car  
8 ride -- let me put it this way. When did you get  
9 back to Marywood's campus, if you remember?

10 A. I'm speculating the next day.

11 Q. So that would be approximately  
12 January 17, 2012?

13 A. I believe that's correct.

14 MR. COHEN: Let's make this Levine  
15 Exhibit 9.

16 (Levine-9, Letter dated January 24,  
17 2012, with attachments, Bates Nos. DEF000166-187, is  
18 received and marked for identification.)

19 BY MR. COHEN:

20 Q. I don't want you to read this whole  
21 thing. Do you recognize it?

22 A. I do recognize it.

23 Q. Okay. This is a letter that President  
24 Munley sent to Professor Fagal on January 24, 2012,

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1 correct?

2 A. Correct.

3 Q. And she here is recommending his  
4 termination, correct?

5 A. Correct.

6 Q. And this is a day after the meeting,  
7 January -- which was on January 23rd, 2012, correct?

8 A. Yes. Is that correct? Yes, correct.

9 Q. Did you contribute or provide any input  
10 into this letter before it was sent?

11 A. Yes.

12 Q. What was your contribution?

13 A. I thought we discussed that.

14 Q. Well, we discussed you had several  
15 conversations. I'm wondering if there was more.

16 A. I believe the conversation that I had  
17 with Sister Anne after the meeting, which was  
18 discussed, was some input, and as I recall, I saw  
19 this letter before it was sent and was final. I  
20 believe that.

21 Q. Did you write any part of this letter?

22 A. I don't believe I wrote or edited any  
23 part of this letter.

24 Q. Do you know when President Munley began

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1 generating this letter?

2 A. No.

3 Q. Prior to this letter going out, did you  
4 make any written recommendation to terminate  
5 Professor Fagal?

6 A. I don't believe so, but if I did, I'm  
7 sure you'd have it.

8 MR. COHEN: Let's have this marked as  
9 Levine Exhibit 10.

10 (Levine-10, Document headed "Talking  
11 Points for Board," Bates Nos. DEF000145-146, is  
12 received and marked for identification.)

13 Q. And do you recognize this document?

14 A. Not immediately. Give me a second.  
15 Yes.

16 Q. These are "talking points for the  
17 board," correct?

18 A. Correct.

19 Q. Did you have any input into drafting  
20 these talking points?

21 A. I don't believe so.

22 Q. But you have seen this before?

23 A. Yes.

24 Q. In reference to this litigation or

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1 before that?

2 MS. PEET: Just by way of clarification,  
3 I think what he's trying to get at is did you see it  
4 in preparing for this deposition or parts of this  
5 litigation or in January or thereabouts 2012?

6 A. I believe I saw it in January 2012.

7 Q. If you look down towards the middle of  
8 the first page, it says Thursday, January 19, 2012,  
9 and then there's a black block, and then there's a  
10 second bullet point that says, "Dr. Levine and  
11 Dr. Dunleavy reviewed AAUP policies," right?

12 A. Right.

13 Q. Is that accurate? I know it says that.  
14 I want to know if that actually happened.

15 A. Yes.

16 Q. Why would you review AAUP policies?

17 A. To make sure we were not doing anything  
18 that was -- could be sanctioned by AAUP.

19 Q. Did you review the progressive  
20 discipline policy that Marywood had in place at the  
21 time?

22 A. I don't remember but I suspect we did.

23 MR. COHEN: Let's have this marked as  
24 Levine Exhibit 11.

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1 (Levine-11, Document headed "Talking  
2 Points for Meeting," Bates No. DEF000147, is received  
3 and marked for identification.)

4 Q. Do you recognize this document?

5 A. No, I don't recognize this document. I  
6 may have seen it, I just -- I don't recognize it.

7 Q. Well, that's all I need to know about  
8 that.

9 MR. COHEN: Let's have this marked as  
10 Levine Exhibit 12, please.

11 (Levine-12, E-mail dated Monday,  
12 January 30, 2012, Bates No. DEF002756, is received  
13 and marked for identification.)

14 Q. Could you read this to yourself and let  
15 me know when you're finished, please?

16 A. Finished.

17 Q. What did you mean when you said to  
18 Joseph Garvey, "I await the massive flare-up to  
19 come"?

20 A. This.

21 Q. You expected there would be litigation?

22 A. Mine or his.

23 MR. COHEN: Let's mark this as Levine  
24 Exhibit 13.

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1 (Levine-13, E-mail dated Monday,  
2 April 2, 2012, Bates No. DEF002380, is received and  
3 marked for identification.)

4 Q. And could you read this to yourself?

5 A. Finished.

6 Q. Barbara McNally was your assistant at  
7 the time?

8 A. She was one of -- yes, yes.

9 Q. Did you tell Miss McNally Professor  
10 Fagal would be leaving Marywood before the date of  
11 this e-mail?

12 A. Probably.

13 Q. You thought that before Professor  
14 Fagal's disciplinary procedures were over, it was a  
15 foregone conclusion he would be out of Marywood?

16 MS. PEET: Objection to the form. You  
17 can answer.

18 A. I thought that was a distinct  
19 possibility, yeah.

20 Q. Do you know what an interrogatory is?

21 A. No.

22 Q. As far as legal proceedings go?

23 A. No.

24 Q. Let me just explain briefly. An

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1 interrogatory is just a question in writing that one  
2 party in litigation can send to another and it has to  
3 be answered under oath, kind of like the written  
4 version of what we're doing here.

5 So before today I had sent Marywood an  
6 interrogatory -- several interrogatories, and they  
7 had been answered, and some of them pertain to you  
8 and I want to see whether they're accurate.

9 So question number one, in paragraph  
10 number 20 of defendant's answer to plaintiff's  
11 amended complaint and affirmative and other defenses,  
12 hereinafter your answer -- and I realize you probably  
13 haven't seen these documents --

14 A. Correct.

15 Q. -- you admitted, I'm talking about  
16 Marywood admitted, to removing some of plaintiff's  
17 posters announcing the FIRE speaker. "Did you or  
18 anyone working for you instruct or suggest that these  
19 posters be removed? If so, who made this instruction  
20 or suggestion? If instruction or suggestion was  
21 oral, please state its content in as close to  
22 verbatim form as possible."

23 The answer that we received, and I want  
24 you to let me know if it's accurate, is: "Defendant

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1 Marywood is unaware of the identity of the individual  
2 who removed plaintiff's posters announcing the FIRE  
3 speaker other than Dr. Alan Levine who removed one  
4 poster. Additionally, defendant is unaware of anyone  
5 who instructed or suggested that plaintiff's FIRE  
6 speaker posters be removed."

7 A. I believe that's correct. I did remove  
8 a poster.

9 Q. Okay. Question number four is: "Did  
10 your vice president for academic affairs, Dr. Alan  
11 Levine, participate in any way in the decision to  
12 suspend Professor Fagal or to maintain the suspension  
13 thereafter? If so, please describe Dr. Levine's  
14 participation in as much detail as possible."

15 The answer that was provided is:  
16 "Dr. Levine supported President Munley's decision to  
17 suspend Professor Fagal and was aware of and helped  
18 orchestrate the January 23rd, 2012, meeting where  
19 Professor Fagal was suspended." Is that accurate?

20 A. Accurate.

21 Q. Do you have anything more to add to  
22 that?

23 A. No.

24 Q. The poster that you removed, was it

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1 stamped approved?

2 A. I don't remember. Probably it was.

3 Q. Why would you remove an approved poster?

4 MS. PEET: Objection. He said he's not  
5 sure, is the appropriate testimony, so you're making  
6 assumptions.

7 MR. COHEN: You can answer.

8 THE WITNESS: Should I answer that?

9 MS. PEET: If you can.

10 BY MR. COHEN:

11 Q. If you can.

12 A. So would you just repeat it one more  
13 time?

14 Q. Why would you remove an approved poster?

15 MS. PEET: Same objection, but you can  
16 answer.

17 A. I wanted to bring it to cabinet so we  
18 could have a discussion.

19 MR. COHEN: Okay. I'm finished,  
20 Dr. Levine. But, Stephanie, do you have any  
21 questions? Stephanie?

22 MS. PEET: I'm thinking.

23 MR. COHEN: I didn't know whether you  
24 heard me.

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1 CROSS-EXAMINATION BY MS. PEET:

2 Q. Dr. Levine, why did you want to discuss  
3 the poster at cabinet?

4 A. The \$50 raffle was something I had never  
5 seen nor was it something that Marywood does. We  
6 don't give money to have people attend classes.

7 Q. Did your bringing the poster to the  
8 cabinet have anything to do with the fact the speaker  
9 was from the organization called FIRE?

10 A. No, I could care less. What do I care  
11 about that?

12 Q. I assume you viewed the videos at that  
13 Dr. Fagal posted on YouTube?

14 A. I'm sorry. Did you say have I seen  
15 them?

16 Q. Did you view them?

17 A. I viewed them.

18 Q. And what was your reaction?

19 A. I was horrified. They not only defamed  
20 me, they defamed my wife. They brought my wife into  
21 this fucking thing. And I lost people in the  
22 Holocaust. I'm Jewish. I was horrified that this  
23 was going out to the world. Are you -- are you  
24 fucking kidding me?

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1 Q. Did you share your -- these sentiments  
2 with Sister Munley?  
3 A. Yeah.  
4 Q. Prior to the suspension of Dr. Fagal?  
5 A. Yes.  
6 Q. As we sit here today, are you -- I  
7 assume you're aware that Dr. Fagal was ultimately  
8 terminated from his employment at Marywood  
9 University, correct?  
10 A. Yes, I am.  
11 Q. And as we sit here today, do you find  
12 that decision to be appropriate?  
13 A. Very much so.  
14 Q. Did you support the decision to  
15 terminate Dr. Fagal's employment with Marywood?  
16 A. I did then and I do now.  
17 MS. PEET: No other questions.  
18 MR. COHEN: I have no follow-up.  
19 (Whereupon, at 11:05 a.m., the  
20 deposition of Alan Michael Levine concluded.)  
21  
22  
23  
24

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1 CERTIFICATE  
2  
3 I HEREBY CERTIFY that the witness was  
4 duly sworn by me and that the deposition is a  
5 true record of the testimony given by the  
6 witness.  
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Judy A. Black  
Registered Professional Reporter  
Dated: September 16, 2016

(The foregoing certification of this  
transcript does not apply to any reproduction of  
the same by any means, unless under the direct  
control and/or supervision of the certifying  
reporter.)

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## INSTRUCTIONS TO WITNESS

1  
2  
3 Please read your deposition over  
4 carefully and make any necessary corrections. You  
5 should state the reason in the appropriate space on  
6 the errata sheet for any corrections that are made.  
7 After doing so, please sign the errata  
8 sheet and date it.  
9 You are signing same subject to the  
10 changes you have noted on the errata sheet, which will  
11 be attached to your deposition.  
12 It is imperative that you return the  
13 original errata sheet to the deposing attorney within  
14 thirty (30) days of receipt of the deposition  
15 transcript by you. If you fail to do so, the  
16 deposition transcript may be deemed to be accurate and  
17 may be used in court.  
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ACKNOWLEDGMENT OF DEPONENT

I, Alan M. Levine, do hereby certify  
that I have read the foregoing pages and that the same  
is a correct transcription of the answers given by me  
to the questions therein propounded, except for the  
corrections or changes in form or substance, if any,  
noted in the attached Errata Sheet.

Alan M. Levine                      Date

Subscribed and sworn  
to before me this  
day of                      , 2016

My commission expires:

Notary Public

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LAWYER'S NOTES

PAGE

# Exhibit 19

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<hr/>	:	
FREDERICK F. FAGAL, JR.	:	
	:	
<i>Plaintiff,</i>	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 3:14-cv-02404-ARC
MARYWOOD UNIVERSITY,	:	
	:	(HON. A. RICHARD CAPUTO)
<i>Defendant.</i>	:	
<hr/>	:	

**OBJECTIONS AND ANSWERS TO DEFENDANT'S FIRST SET OF  
INTERROGATORIES TO PLAINTIFF**

Plaintiff Frederick F. Fagal, Jr. hereby submits these Objections and  
Answers to Defendant's First Set of Interrogatories to Plaintiff.

**INTERROGATORY NO. 1**

Identify each and every person who assisted you in preparing your Answers to these Interrogatories.

**ANSWER**

Jonathan Z. Cohen, Esq.  
Male  
Manager  
175 Strafford Avenue  
Suite 1 # 212  
(215) 874-0047  
Jonathan Z. Cohen Ltd.

My Cohen is my attorney.



**INTERROGATORY NO. 2**

Identify each and every person, including telephone number and last known address, who you believe has knowledge of any facts relating to this matter and give a detailed description of the knowledge possessed by each individual.

**ANSWER**

Please see Plaintiff's Initial Disclosures Under Federal Rule of Civil Procedure 26(a)(1) ("Plaintiff's Initial Disclosures"). I also believe that the following persons may have knowledge of facts related to "this matter." The facts or listed knowledge areas are those known or likely to be known by each cited person. The facts or knowledge known by each person only include facts known or likely to be known because the person was a participant in the events. I do not include in this answer any person who "has knowledge of any facts relating to this matter" if their "knowledge" is in no way original but merely based on hearsay.

<u>Name</u>	<u>Sex</u>	<u>Telephone #</u>	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed By The Individual (see below)
Carl Oliveri	M	Unknown	179 Longwood Avenue, Boston, MA 02115	
Carl Oliveri knows that I arranged with him to have the Marywood University Student Activities office, on November 28, 2011, stamp posters announcing the 2:00 pm November 30, 2011 speech by Will Creeley of FIRE.				

<u>Name</u>	<u>Sex</u>	<u>Telephone #</u>	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed By The Individual (see below)
Alan Levine	M	Unknown		
<p>Alan Levine was Marywood University's Vice President for Academic Affairs at all times relevant to the events of this matter. In addition to all facts alleged in the Amended Complaint in this matter, Levine knew or likely knew of the following:</p> <ul style="list-style-type: none"> <li>• The scheduled speech by FIRE;</li> <li>• Marywood's Executive Committee had approved the tear-down of the FIRE posters;</li> <li>• He told Oliveri to tear down the FIRE posters;</li> <li>• There was no valid reason to tear down the FIRE posters;</li> <li>• He did not suspend me even though only he had the right to perform suspensions;</li> <li>• He made statements to the Marywood University newspaper, The Wood Word, on February 22, 2015, about this matter. Specifically, Levine stated: "What we try to do is follow the AAUP [American Association of University Professors] guidelines....In my time as [VPAA], I don't believe we have done anything but follow the AAUP guidelines that are in our faculty handbook."</li> </ul>				

<u>Name</u>	<u>Sex</u>	<u>Telephone #</u>	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed By The Individual (see below)
Geri Smith	F	(570) 899-9439	19 E Kirmar Ave Nanticoke, PA 18634-3607	
Geri Smith knew that on November 28, 2011 the posters announcing the FIRE speech were stamped for approval for hanging. She also knew by observation that the posters had been torn down.				

<u>Name</u>	<u>Sex</u>	<u>Telephone #</u>	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed By The Individual (see below)
Katie M. Aunchman	F	(518) 745-1203	21 Uncas Street Glens Falls, NY 12801-3118	
Katie M. Aunchman was the person in charge of stamping the posters approved on the morning of November 28, 2011. She was a graduate student and worked in the Student Activities office under Carl Oliveri and she oversaw the Council of Clubs. Several work study students there that morning helped Aunchman stamp the posters approved. Aunchman should know the names of the work-study students who helped her with the stamping.				

<u>Name</u>	<u>Sex</u>	<u>Telephone #</u>	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed By The Individual (see below)
Benjamin Harrington	M	Unknown	Unknown	
Benjamin Harrington was a Marywood student who said he would be at the Student Activities office Wednesday Nov 30 to get new (approved) posters to hang. He may have witnessed Carl Oliveri tell me that Marywood University tore down the posters that had been stamped approved on Monday Nov 28 2011.				

<u>Name</u>	<u>Sex</u>	<u>Telephone #</u>	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed By The Individual (see below)
Samantha Coco	F	Unknown	Unknown	
Samantha Coco was a Marywood student who on November 28 2011 helped hang approved posters. She may have witnessed them being stamped approved. She later noticed that some posters she hung were missing.				

<u>Name</u>	<u>Sex</u>	<u>Telephone #</u>	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed By The Individual (see below)
Nicholas A. Pesarcik	M	Unknown	Unknown	
Nicholas Pesarcik was a work study student in the Student Activities office. He is likely to have witnessed the posters being stamped approved and may have stamped some. He likely knows that the posters stamped approved on Monday November 28 were torn down by Marywood personnel and knows who did it.				

<u>Name</u>	<u>Sex</u>	<u>Telephone #</u>	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed By The Individual (see below)
Anne Munley	F	(570) 348-6231	2300 Adams Avenue Scranton, PA 18509	
Sister Anne Munley, who was President of Marywood University at all times relevant to this matter, knew or likely knew of all facts alleged in the Amended Complaint filed in this matter.				

<u>Name</u>	<u>Sex</u>	<u>Telephone #</u>	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed by The Individual (see below)
Raymond P. Heath	M	Unknown	Unknown	
Heath was a member of Marywood's Executive Committee at all times relevant to this matter. He knew or likely knew that the Executive Committee approved the tear-down of the FIRE posters.				

<u>Name</u>	<u>Sex</u>	<u>Telephone #</u>	<u>Last Known Address</u>	<u>Knowledge of Facts Which May Be Possessed by The Individual (see below)</u>
Clayton N. Pheasant	<u>M</u>	(814) 669-9003	301 6th Street, Alexandria, PA 16611-3338	
Pheasant was a member of Marywood's Executive Committee at all times relevant to this matter. He knew or likely knew that the Executive Committee approved the tear-down of the FIRE posters.				

<u>Name</u>	<u>Sex</u>	<u>Telephone #</u>	<u>Last Known Address</u>	<u>Knowledge of Facts Which May Be Possessed by The Individual (see below)</u>
Mary Theresa Gardier Paterson	F	(570) 340-6018	Unknown	
Paterson was a member of Marywood's Executive Committee at all times relevant to this matter. She knew or likely knew that the Executive Committee approved the tear-down of the FIRE posters. As Marywood's General Counsel, she also knew or likely knew the content of all written policies applicable to my discipline.				

<u>Name</u>	<u>Sex</u>	<u>Telephone #</u>	<u>Last Known Address</u>	<u>Knowledge of Facts Which May Be Possessed by The Individual (see below)</u>
Michael A. Foley	M	Unknown	17 Canyoncreek Lane Fuquay Varina, NC 27526-5222	
Foley was present at the meeting referenced in Paragraph No. 26 of the Amended Complaint. Therefore, he knows or likely knows what was said and not said at that meeting.				

<u>Name</u>	<u>Sex</u>	<u>Telephone</u> #	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed By The Individual (see below)
Sr. Margaret Gannon	F		Unknown	
Gannon knew the FIRE speaker was scheduled and she observed that some posters remained up after I had announced that posters had been torn down. She may have made inquiries about what had happened and learned that my posters had in fact been torn down.				

<u>Name</u>	<u>Sex</u>	<u>Telephone</u> #	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed by The Individual (see below)
Amy Paciej- Woodruff	F	Unknown	Unknown	
Dean Paciej-Woodruff was aware that I had arranged for a FIRE speaker to speak on campus prior to my posters going up and that I had asked her to publicize the event.				

<u>Name</u>	<u>Sex</u>	<u>Telephone</u> #	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed By The Individual (see below)
Helen Bittel, Ph.D.	F	Unknown	Unknown	
Helen Bittel was a member of the Faculty Senate Ad Hoc Hearing Committee and should be familiar with the details regarding my suspension and dismissal.				

<u>Name</u>	<u>Sex</u>	<u>Telephone</u> #	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed by The Individual (see below)
Sr. Gail Cabral	F	Unknown	Unknown	
<p>Sr. Gail Cabral was president of Marywood's Faculty Senate. She was aware that I had arranged for a FIRE speaker to speak on campus prior to my posters going up. Because she was President of the Faculty Senate she was informed when I filed a grievance against President Munley. She also likely knew the content of the grievance that I filed against President Munley. Finally, Sr. Gail Cabral was likely familiar with the Ad Hoc Hearing Committee process which led to the confirmation of my dismissal.</p>				

<u>Name</u>	<u>Sex</u>	<u>Telephone</u> #	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed by The Individual (see below)
Patricia E. Dunleavy, Ph.D.	F	Unknown	Unknown	
<p>Dunleavy, Marywood's Associate Vice President for Human Resources, was present at the meeting referenced in Paragraph No. 26 of the Amended Complaint. Therefore, she knows or likely knows what was said and not said at that meeting. Dunleavy also knew that I was permitted to clean out my office without supervision. Thus she likely knew I was not perceived as a threat.</p>				

<u>Name</u>	<u>Sex</u>	<u>Telephone</u> #	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed by The Individual (see below)
Frederick F. Fagal, Jr.	M	(315) 685- 0429	17 East Lake Street Skaneateles, NY 13152	
<p>I am the Plaintiff, and I am familiar with all claims made in the Amended Complaint.</p>				

<u>Name</u>	<u>Sex</u>	<u>Telephone</u> #	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed by The Individual (see below)
Joseph X. Garvey, Jr.	M	Unknown	Unknown	
Garvey, Marywood's Vice President for Business Affairs and Treasurer, was a member of Marywood's Executive Committee at all times relevant to this matter. He knew or likely knew that the Executive Committee approved the tear-down of the FIRE posters. If he was present at the meeting referenced in Paragraph No. 26 of the Amended Complaint, then he knows or likely knows what was said and not said at that meeting.				

<u>Name</u>	<u>Sex</u>	<u>Telephone</u> #	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed by The Individual (see below)
Edward J. O'Brien, Ph.D.	M	Unknown	Unknown	
O'Brien was a Marywood professor and he served on the Faculty Senate Ad Hoc Hearing Committee. Professor O'Brien will likely be familiar with the details regarding my suspension and dismissal.				

<u>Name</u>	<u>Sex</u>	<u>Telephone</u> #	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed by The Individual (see below)
Mathew Povse	M	Unknown	Unknown	
Povse was a member of the Faculty Senate Ad Hoc Hearing Committee. He should be familiar with the details regarding my suspension and dismissal.				



<u>Name</u>	<u>Sex</u>	<u>Telephone #</u>	<u>Last Known Address</u>	Knowledge of Facts Which May Be Possessed by The Individual (see below)
Erin A. Sadlack, Ph.D.	F	Unknown	Unknown	
Sadlack chaired the Grievance Committee which examined my grievance against President Munley. She would know the details leading to the committee's decision to dismiss my complaint.				

### **INTERROGATORY NO. 3**

State with particularity the nature, basis, amount and manner of computation of all monetary relief and/or damages that you are seeking from Defendants and identify each and every document that reflects or relates to the information requested in this Interrogatory.

### **OBJECTIONS**

This interrogatory is not reasonably particular with regard to the documents required to be identified. This interrogatory calls for disclosure of information protected by the attorney-client privilege and/or as trial-preparation material; no such information will be disclosed.

### **ANSWER**

Please see Part III of Plaintiff's Initial Disclosures. Please also see the documents produced contemporaneously in the electronic folder labeled "Damages."

**INTERROGATORY NO. 4**

Please state your full name, present address, your date and place of birth, your Social Security number, your driver's license number and, if you have ever been known by any other name, please state all names by which you have been known, the dates of use of each such name, and the reasons for any change of name.

**ANSWER**

My full name is Frederick Franklin Fagal, Jr. I was born on [REDACTED], 1946 in Boston, Massachusetts. My social security number is [REDACTED]-9022. My New York driver's license number is [REDACTED] 119.

**INTERROGATORY NO. 5**

If you have ever been charged with, pleaded guilty to, or been convicted of a crime, please state the date of each prosecution or conviction, the name of each court and the location of each court where the charge, prosecution or conviction took place, and a full description of any and all sentences imposed.

**ANSWER**

I am not sure whether this constitutes a “crime” or merely an infraction under New York law: On September 12 or 13, 1968, I was arrested for driving while intoxicated. However, that charge was never introduced in court and instead the charge became Driving Under the Influence or DUI, which was less serious. I instead pled guilty to the charge of Driving Under the Influence (now called “driving while ability-impaired”) in Ithaca City Court, New York on September 13, 1968. I had to pay either a \$50.00 or \$100.00 fine.

**INTERROGATORY NO. 6**

If you have ever been involved in any civil legal action (workers' compensation claims included), either as defendant or plaintiff, or filed a charge or complaint with any administrative agency, state the date and place of each such action, including the name of the court or agency, and parties involved, the court or agency docket number of all such actions, the names of attorneys representing each party, a description of the nature of each such action, including the disposition of each such action, whether or not there was an appeal and, if so, the result thereof including the name and citation of each case reported, and the amount of any settlement or judgment obtained in each such case.

**ANSWER**

In October 1973, I filed a small-claims action against Lansing West Apartments and Gerald Talandis for the return of a \$235.00 security deposit. I believe that my wife, Janet S. Fagal, was a co-plaintiff. The name of the court was the Ithaca City Court. I do not know the docket number. I believe that the Defendants had an attorney, but I cannot recall a name. I lost this action. There was no appeal.

### **INTERROGATORY NO. 7**

State whether any investigation been conducted by you or by anybody else with regard to your claim against Defendant. If so, as to each investigation state the date and reason for such investigation; whether any record or report was made of it; the name, address and telephone number of the person or organization conducting the investigation; and the verbatim contents of any record or report made, or attach copies thereof to your answers to these Interrogatories.

### **OBJECTIONS**

This interrogatory calls for disclosure of information and documents protected by the attorney-client privilege and as trial-preparation materials. No such information or documents will be disclosed. This interrogatory is also vague as it fails to explain what type of “investigation” is contemplated.

### **ANSWER**

My attorney, Mr. Cohen, has performed an investigation into the facts and law regarding this matter. That investigation began in January or February 2012 and has been ongoing since then. The purpose of this investigation has been to

defend me from Marywood's bogus disciplinary proceedings and to seek a legal remedy from the resulting discipline.

**INTERROGATORY NO. 8**

Set forth whether you have obtained a statement from any person concerning this matter and, if so, state the name and address of the person who gave the statement and the date the statement was obtained; if written, whether signed by this person; if oral, the name and address of the person who obtained the statement, and the date the statement was obtained; and attach a copy of all written statements; or if oral, set forth completely the substance of said statements.

**OBJECTIONS**

This interrogatory is vague and ambiguous, as it fails to explain what type of “statement” is contemplated.

**ANSWER**

No.



**INTERROGATORY NO. 9**

If you contend that any party to this action has, at any time, made any admissions, state the date of the admission; the name and address of the person making it; the name and address of the person or persons to whom it was made; set forth the nature of the admission in detail; state whether it was reduced to writing; the place where the admission was made; and names and addresses of the persons present when it was made.

**ANSWER**

On December 1, 2011, Dean Levine suggested in an email that Marywood personnel removed at least some of my FIRE posters. Mr. Levine's address is 2300 Adams Avenue, Scranton, Pennsylvania 18509. I do not know where Dean Levine was when he wrote the email or whether anybody else was in his presence.

On January 24, 2012, President Munley sent a letter to me. In that letter, she repeatedly stated that Marywood had an "agreement" with me. She also enclosed a "Letter of Agreement" executed by both us as well as written policy indicating that successful candidates for tenure receive a "tenure contract." President Munley's address is at 2300 Adams Avenue, Scranton, Pennsylvania 18509. I do

not know where President Munley was when she wrote the letter or whether anybody else was in her presence.

On February 8, 2012, President Munley sent me another letter. In that letter, President Munley repeatedly stated that Marywood had an “agreement” with me. President Munley referred to a “breach of a material term.” She also enclosed a “Letter of Agreement” executed by both us as well as written policy indicating that successful candidates for tenure receive a “tenure contract.” I do not know where President Munley was when she wrote the letter or whether anybody else was in her presence.

On February 9, 2012, Marywood’s attorney, William J. Anthony, sent my attorney a letter. In that letter, Mr. Anthony repeatedly admitted that Marywood and I had a “contract.” Mr. Anthony’s addresses are at 18 Corporate Woods Boulevard, Third Floor, Albany, New York 12211 and 90 State House Square, 8th Floor, Hartford, Connecticut 06103. Mr. Anthony’s letter was copied to Stephanie Peet, an attorney from the same law firm. I do not know whether anybody else was in Mr. Anthony’s presence when he wrote this letter.

On February 28, 2012, Mr. Anthony sent another letter to my attorney. In that letter, Mr. Anthony admitted that Marywood and I had an “agreement” and a

“contract.” That letter was copied to President Munley and Ms. Dunleavey. I do not know whether anybody else was in Mr. Anthony’s presence when he wrote this letter.

On or around February 22, 2015, Dean Levine made the following statements to Marywood’s student newspaper, The Wood Word, in an article about this lawsuit: “What we try to do is follow the AAUP [American Association of University Professors] guidelines....We try very hard to follow this policy. It is in our handbook as well.” Dean Levine’s address is 2300 Adams Avenue, Scranton, PA 18509. The statements were presumably made to the article’s authors, Rachel Looker and Satara Dickey. Dean Levine’s statements were reduced to writing in the above-referenced article. I do not know the place where the admission was made or who else was present at the time of the admission.

On April 9, 2015, Marywood’s attorney, Ms. Peet, electronically filed Defendant’s Reply Brief in Support of its Motion to Dismiss Plaintiff’s Complaint. On page 27 of that brief, Defendant’s attorney stated: “On the contrary, Marywood did not accept any further performance from Plaintiff upon learning of his breach, notified him of the breach and continued limited performance only to protect itself from potential liability for immaterial breaches.” Thus, Defendant has admitted that it breached its contract with Plaintiff. Ms. Peet’s address is 1601

Cherry Street, Suite 1350, Philadelphia, Pennsylvania 19102. I do not know where Ms. Peet was when she filed the brief or whether she was with anybody else.

On June 30, 2015, Defendant, through Ms. Peet, electronically filed Defendant's Answer to Plaintiff's Amended Complaint and Affirmative and Other Defenses. In Paragraph No. 15, Defendant admitted that it entered into an agreement with me in May 2011. In Paragraph No. 19, Defendant admitted that I received approval to hang posters announcing the speaker from FIRE. In Paragraph No. 20, Defendant admitted that it removed some of my posters announcing the FIRE speaker. I do not know where Ms. Peet was when she filed the brief or whether she was with anybody else.

On September 17, 2015, Defendant's attorney, Katherine Thomas Batista, electronically filed a Joint Case Management Plan with the Court. Ms. Peet also apparently approved of this document. In that document, Marywood admits that it had an "agreement" with me and—at one time—"contractual obligations" to me. Ms. Batista's address is 1601 Cherry Street, Suite 1350, Philadelphia, Pennsylvania 19102. I do not know where Ms. Batista or Ms. Peet were when this document was filed, or whether they were with anybody else.

### **INTERROGATORY NO. 10**

Please describe all Internet social media sites including, but not limited to, Facebook, Twitter, LinkedIn, Pinterest, MyLife, MySpace, Reunion, YouTube, Foursquare, Tumblr, Reddit, StumbleUpon, Instagram and Digg, that you have, or have had an account with from November 2011 to the present, including your user name, html address of main page, approximate frequency of postings, and approximate date range you have had the account.

### **ANSWER**

My Facebook username is frederick.fagal. The HTML address is <https://www.facebook.com/frederick.fagal>. I post on Facebook on rare occasion. I have been a Facebook member since December 14, 2006.

My LinkedIn username is [fffagal@yahoo.com](mailto:fffagal@yahoo.com). The HTML address is <https://www.linkedin.com/in/fffagal>. I post on LinkedIn rarely if ever. I have been a LinkedIn member since May 6, 2008.

My YouTube account is connected to the Google account associated with [fffagal@gmail.com](mailto:fffagal@gmail.com). There is also a separate username of freespeech1946. The HTML address is <https://www.youtube.com/channel/UC->

[8KleRktob33\\_LKca5VG3Q](#). I rarely post on YouTube. I have had a YouTube account since September 11, 2011.

My classmates username is [fffagal@yahoo.com](mailto:fffagal@yahoo.com). The HTML address is <http://www.classmates.com/people/Fred-Fagal/8679740058>. I rarely if ever post on classmates. I have had an account on classmates since approximately 2013.

**INTERROGATORY NO. 11**

Identify any other tenured professor who you believe engaged in similar conduct to Plaintiff's in sending out an email to faculty containing links to two satirical videos.

**ANSWER:**

Laurie McMillan, Ph.D.  
Female  
Associate Professor  
Marywood University  
2300 Adams Avenue  
Scranton, PA 18509

**INTERROGATORY NO. 12**

In Paragraphs 29-31 of the Amended Complaint, Plaintiff identifies three ways in which Marywood allegedly breached Plaintiff's employment contract. If you contend that Marywood breached Plaintiff's employment agreement in any other ways, or based on any other theories, please identify and explain them.

**ANSWER**

Yes, I do contend that Marywood breached my employment agreement in other ways. Please see my Amended Complaint at Paragraph Nos. 40-43, 58, and 63. These paragraphs fully explain the other ways in which Marywood breached my employment agreement.



**INTERROGATORY NO. 13**

Please list all email addresses that you have, or have had from November 2011 to the present and identify the one(s) that are your primary addresses.

**ANSWER**

My primary email address is [fffagal@yahoo.com](mailto:fffagal@yahoo.com). The other email addresses covered by this interrogatory are [fffagal@gmail.com](mailto:fffagal@gmail.com), [fagal@marywood.edu](mailto:fagal@marywood.edu), [fagal@es.marywood.edu](mailto:fagal@es.marywood.edu), and [fagal@maryu.marywood.edu](mailto:fagal@maryu.marywood.edu).

**INTERROGATORY NO. 14**

Please describe the actions you have taken, if any, to preserve ESI in your possession or control that might be relevant to any of the claims or defenses made in this case, and for each such action state: the date or dates on which the action was taken; and, the names and complete contact information of any persons other than yourself involved in the actions, specifying the action taken by these third parties.

**ANSWER**

I have a portable backup hard drive, which continuously backs up my desktop computer. I have had this portable backup drive for over a year. I also have a clone of the hard drive that is in my desktop computer. I bought this clone drive in July 2015. I also have a portable backup hard drive that continuously backs up my laptop computer. I bought this in 2014. My email accounts are all cloud-based such that Yahoo! and Google maintain the messages on their servers. My attorney has retained Capsicum Group LLC to preserve the entire contents of my [fffagal@yahoo.com](mailto:fffagal@yahoo.com) and [fffagal@gmail.com](mailto:fffagal@gmail.com) email accounts. Capsicum's address is 2929 Arch Street, Suite 1525, Philadelphia, Pennsylvania 19104. Many of my files related to this case are also stored on Dropbox, another cloud-based service. On

November 17, 2015, I downloaded the entire contents of my Facebook account. On November 3 and 17, 2015, I downloaded the entire contents of my LinkedIn account. Today, I downloaded the entire contents of my Google account.

Respectfully,

By: Jonathan Z. Cohen  
Jonathan Z. Cohen (PA205941)  
175 Strafford Avenue  
Suite 1 # 212  
Wayne, PA 19087-3340  
(215) 874-0047  
(215) 839-8951 (fax)  
jzc@jzc-law.com

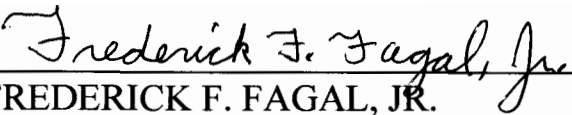
*Attorney for Plaintiff Frederick F. Fagal, Jr.*

Date: November 20, 2015

**OATH**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November \_20\_, 2015.

  
FREDERICK F. FAGAL, JR.

# Exhibit 20

**EXHIBIT**  
**20**



**Marywood**

UNIVERSITY

OFFICE OF ACADEMIC AFFAIRS

MARYWOOD UNIVERSITY  
SCRANTON, PA 18509-1598  
TEL: (570) 348-6232  
FAX: (570) 961-4743  
[LEVINE@MARYWOOD.EDU](mailto:LEVINE@MARYWOOD.EDU)  
[www.marywood.edu](http://www.marywood.edu)

December 15, 2011

Dr. Frederick F. Fagal, Jr  
Department of Social Sciences  
Marywood University  
2300 Adams Ave.  
Scranton, PA 18509

Dear Fred,

It appears we have a different understanding of what transpired around the issue of the posters that advertised the presentation by Will Creeley of the Foundation for Individual Rights in Education (FIRE). Whether we will ever come to complete agreement concerning the exact timeframe for approval, or lack thereof, remains to be seen, but at any rate I do want to respond to your letter of December 5, 2011.

Sr. Anne Munley and I remain open to future presentations that are not in conflict with our mission statement or core values, and are organized according to our policies and practices. However, we are not willing to undertake any of the specific requests that are contained in your letter.

Please feel free to be in touch if you want to further discuss this issue.

Sincerely,

Alan M. Levine, PhD  
Vice President for Academic Affairs

Cc: Sr. Anne Munley, IHM, President  
Michael Foley, Ph.D., Dean, College of Liberal Arts and Sciences  
File

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